United States Court of Appeals
for the Second Circuit

JOINT APPENDIX

76-7042

United States Court of Appeals

For the Second Circuit

B

TAXI WEEKLY, INC.,
Plaintiff-Appellee,

against

METROPOLITAN TAXICAB BOARD OF TRADE, INC., HOSYND PUBLICATIONS, INC., JACK PLOTSKY, ESTATE OF MORRIS HEIT, ESTATE OF GEORGE McINTYRE, ALFRED ZEFF, MORRIS LEFKOWITZ, MILTON MARKS, LEON MURSTEIN, GERALD NAREN, IRA SUCHMAN and LEONARD SCHAFFRAN,
Defendants-Appellants,

and

TAXICAB BUREAU, INC., EMPIRE TAXICAB COOPERATIVE, INC., INDEPENDENT TAXICAB OWNERS GUILD, INC., UNITED TAXI OWNERS GUILD, INC., BENJAMIN BOTWINICK, SALVATORE BARON, ESTATE OF ALFRED J. MARKS and ESTATE OF NATHAN LEVINE,
Defendants.

UNITED STATES COURT OF APPEALS
FILED
APR 12 1976
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SECOND CIRCUIT

JOINT APPENDIX

VOLUME I OF THREE VOLUMES

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United States District Court

Southern District of New York

66 Civ. 2827

Taxi Weekly, Inc.,

Plaintiff,

against

Metropolitan Taxicab Board of Trade, Inc., Taxicab Bureau, Inc., Empire Taxicab Cooperative, Inc., Independent Taxicab Owners Guild, Inc., United Taxi Owners Guild, Inc., Hosynd Publications, Inc., Jack Plotsky, Estate of Morris Heit, Benjamin Botwinick, Salvatore Baron, Estate of Alfred J. Marks, Estate of George McIntyre, Alfred Zeff, Morris Lefkowitz, Estate of Nathan Levine, Milton Marks, Leon Murstein, Gerald Naren, Ira Suchman and Leonard Schaffran,

Defendants.

DATE	PROCEEDINGS
9- 2-66	Filed complaint and issued summons.
9-26-66	Filed Answer of defts. Metropolitan Taxicab Bd. of Trade, Inc.; Benjamin Botwinick; Taxicab Bureau Inc.; Morris Heit; Jack Plotsky; Milton Marks; Gerald Naren; Leon Murstein; Ira Schuman [sic] & Leonard Schaffran.

Relevant Docket Entries

DATE	PROCEEDINGS
9-27-66	Filed Answer of defts. George McIntyre, Hosynd Publications, Inc. & Alfred Zeff.
11- 7-66	Filed Answer of deft. Morris Lefkowitz.
12-15-70	Filed Memorandum-Opinion #37257 by Croake, J. "Defts in this action have moved to dismiss pltff's complaint on grounds that the Court lacks subject matter jurisdiction over the action. The motion is denied—So Ordered: Croake, J."
7- 7-75	Jury trial begun & continued, July 8, July 9, July 10, July 11, July 14, July 15, July 16.
7-16-75	Trial concluded (Total 8 days). Jury verdict for pltff. Defts motion for new trial as to damages—Dec. Reserved.
8- 1-75	Filed Memo End on back of Memo of Law fld 12-3-74 * * * Defts' motion to dismiss the 3rd cause of action is granted see Trial minutes of 7-9-75. So Ordered. * * * Griesa, J. mn.
8- 1-75	Filed Memo-End on back of Motion for new trial fld 8-1-75. * * * Motion denied. See minutes of hearing of 7-3-75. So Ordered. * * * Griesa, J. mn.
8- 1-75	Filed Defts' motion to dismiss pltff's 4th and 5th causes of action is granted. See Trial minutes of 7-8-75. * * * So Ordered. * * * Griesa, J. mn.

Relevant Docket Entries

DATE	PROCEEDINGS
11-10-75	Filed transcript of record of proceedings dated July 14, 15, 16, 31, 1975.
12- 4-75	Filed transcript of record of proceedings dated July 7, 8, 9, 10, 11, 1975.
1-16-76	Filed Judgment #76,051—that pltff. Taxi Weekly, Inc. and S. L. Peterman have judgment against defts. Metropolitan Taxicab Board of Trade, Inc., Hosynd Publications, Inc., Jack Plotsky, the Estate of Morris Heit, Benjamin Botwinick, the Estate of George McIntyre, Alfred Zeff, Morris Lefkowitz, Milton Marks, Leon Murstein, Gerald Naren, Ira Suchman, and Leonard Schaffran, jointly and severally, in the sum of $225,000, then trebled to the sum of $675,000, with attys' fees in the amount of $200,000, making a total of $875,000.00 with costs to be taxed. Griesa, J. Judgment entered 1-19-76.
1-21-76	Filed stip & order that pltff. received the moneys for advertisements as indicated and that the facts set forth in the tables indicated concerning such advertising and the products advertised are true. Griesa, J.
1-29-76	Filed defts' notice of appeal to USCA from the final judgment entered on 01-19-76. Copies mailed to: Casey, Lane & Mittendorf and Charles La Torella. Entered 02-02-76.

Relevant Docket Entries

DATE	PROCEEDINGS
2- 5-76	Filed Amended Judgment #76,051—that said judgment (filed 1-16-76) is amended to the extent as provided above and in accordance with the special verdict of the jury, it is ordered that pltffs. Taxi Weekly, Inc. and S. L. Peterman have judgment against defts. Metropolitan Taxicab Board of Trade, Inc., Hosynd Publications, Inc., Jack Plotsky, Jean Heit, as executrix of the estate of Morris Heit, Benjamin Botwinick, Marie McIntyre, as administratrix of the estate of George McIntyre, Alfred Zeff, Morris Lefkowitz, Milton Marks, Leon Murstein, Gerald Naren, Ira Suchman and Leonard Schaffran, jointly and severally, in the sum of $225,000. trebled to the sum of $675,000, with attys' fees in the amount of $200,000, making a total of $875,000.00, with costs to be taxed. Griesa, J. Judgment entered—2-9-76. Clerk (m/n).
3-31-76	Filed transcript of record of proceedings, dated January 8, 1976.
2-24-76	Filed transcript of record of proceedings, dated January 5, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
------------------------------------ x

TAXI WEEKLY, INC.,
:
Plaintiff,
Civil Action
- against - : No.

METROPOLITAN TAXICAB BOARD OF TRADE, INC., TAXICAB BUREAU, INC., EMPIRE TAXICAB COOPERATIVE, INC., INDEPENDENT TAXICAB OWNERS COUNCIL, INC., UNITED TAXI OWNERS GUILD, INC., HOSYND PUBLICATIONS, INC., JACK PLOTSKY, MORRIS HEIT, BENJAMIN BOTWINICK, SALVATORE BARON, ALFRED J. MARKS, GEORGE McINTYRE, ALFRED ZEFF, MORRIS LEFKOWITZ, NATHAN LEVINE, MILTON MARKS, LEON MURSTEIN, GERALD NAREN, IRA SUCHMAN and LEONARD SCHAFFRAN,

Defendants. :

------------------------------------x

COMPLAINT

PLAINTIFF DEMANDS TRIAL BY JURY

Plaintiff, by its attorneys, Butler, Jablow & Geller, for its complaint in this action, alleges as follows:

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

1. This cause of action arises under the anti-trust laws of the United States, more particularly the Sherman Anti-Trust Act, 15 USC §§1 and 2, as hereinafter more fully appears.

2. At the times herein mentioned, plaintiff was and now is a New York business corporation with its office and prin-

cipal place of business in the City, County and State of New York.

3. At the times herein mentioned, plaintiff published and now publishes a weekly newspaper called "Taxi Weekly," which is sold and distributed principally in the City of New York to taxicab owners and drivers and other persons connected with or interested in the taxicab industry, and plaintiff also published and now publishes a monthly magazine called "Taxicab Industry/Auto Rental News," which is sold and distributed throughout the United States, principally to owners, managers and executives of taxicab and auto and truck rental and leasing fleets and to other persons connected with or interested in such business activities. Plaintiff's main source of income derives from the sale of advertising space in its publications to individuals and firms located throughout the United States. Plaintiff is engaged in interstate commerce.

4. At the times herein mentioned, defendants Metropolitan Taxicab Board of Trade, Inc. (hereinafter called "Metropolitan"), Taxicab Bureau, Inc., and Empire Taxicab Cooperative, Inc., were and now are trade associations composed of fleet taxicab companies and/or the principals thereof, and, on information and belief, said defendants were and now are New York membership corporations.

5. At the times herein mentioned, defendants Independent Taxicab Owners Council, Inc. and United Taxi Owners Guild, Inc., were and now are trade associations, composed of taxicab owner-drivers. In addition, defendant United Taxi Owners

Guild, Inc., was and now is the publisher of "The UTOG Newscaster," which is a monthly newspaper distributed principally in New York City to taxicab owner-drivers, and "The UTOG Newscaster" competes directly with plaintiff's newspaper. On information and belief, said defendants were and now are New York membership corporations.

6. At the times herein mentioned, until in or about June, 1966, defendant Hosynd Publications, Inc., was the publisher of "The N. Y. Hackman," and thereafter it was and now is the publisher of the "ITOC News." Both of the said publications were and/or now are distributed, principally in New York City, "The N. Y. Hackman" to taxicab owners and drivers and other persons connected with or interested in the taxicab industry and "ITOC News" to taxicab owner-drivers. Both, however, competed and/or now compete directly with plaintiff's newspaper. On information and belief, defendant Hosynd Publications, Inc., was and now is a New York business corporation.

7. At the times hereinafter mentioned, all of the said defendant corporations were acting through their respective duly authorized officers, agents, representatives and employees and the combination, conspiracy and acts hereinafter complained of were entered into and performed by such officers, agents, representatives and employees with the knowledge and sanction of their respective corporations.

8. At the times herein mentioned, defendant Jack

Plotsky was and now is a principal of a fleet taxicab company and, at some of the times herein mentioned, he was and now is president of defendant Metropolitan.

9. At the times herein mentioned, defendant Morris Heit was and now is a principal of a fleet taxicab company and, on information and belief, at some of the times herein mentioned, he was and now is a vice-president of defendant Metropolitan.

10. At some of the times herein mentioned, defendant Benjamin Botwinick was and now is the president of Taxicab Bureau, Inc., and, on information and belief, he was and now is an officer of defendant Metropolitan.

11. At some of the times herein mentioned, defendant Salvatore Baron was and now is the chairman of the board of defendant Independent Taxicab Owners Council, Inc., executive director of defendant United Taxi Owners Guild, Inc., and editor of the latter's publication, "The UTOG Newscaster."

12. At some of the times herein mentioned, defendand Alfred J. Marks was and now is president of defendant Independent Taxicab Owners Council, Inc.

13. At some of the times herein mentioned, defendant George McIntyre was president of defendant Hosynd Publications, Inc. and public relations man for defendant Metropolitan.

14. At the times herein mentioned, until in or about

September, 1964, defendant Alfred Zeff was an employee of plaintiff. Thereafter, from in or about November, 1964, until in or about June, 1966, he was editor and publisher of "The N. Y. Hackman," and thereafter he was and now is the editor and publisher of the "ITOC News."

15. At the times herein mentioned, defendants Morris Lefkowitz, Nathan Levine, Milton Marks, Leon Murstein, Gerald Naren, Leonard Schaffran and Ira Suchman were and now are principals of fleet taxicab companies.

16. Prior to May, 1964, plaintiff's publications were successful journalistic ventures, and plaintiff derived a substantial profit therefrom.

17. Commencing in or about May, 1964, and continuing thereafter until the filing of this complaint, defendants, their agents, servants and employees, did knowingly and unlawfully combine, conspire, agree and have a tacit understanding together with each other and with various other individuals and firms to restrain and/or monopolize trade and commerce in the dissemination of news and other activities within and/or related to the taxicab industry in and among the several states, and they did in fact restrain and/or monopolize such trade and commerce.

18. The said combination, conspiracy and acts of defendants were in violation of Sections 1 and 2 of the Sherman Anti-Trust Act, 15 USC §§1 and 2.

19. It was a part of the said combination and con-

spiracy and the object and purpose thereof to accomplish the following, among other things:

(a) to knowingly and unlawfully destroy plaintiff's publications and to drive plaintiff out of business;

(b) to knowingly and unlawfully suppress and eliminate competition between and among newspapers and other publications serving the taxicab industry; and

(c) to knowingly and unlawfully create a monopoly in the dissemination of news within the taxicab industry.

20. As part of the said combination and conspiracy and to effectuate its object and purpose, defendants did the following, among other things:

(a) They cancelled standing orders for bulk copies of plaintiff's newspaper, which had been outstanding for several years, and thereafter they failed and refused to place any such orders.

(b) They exerted pressure on individuals and firms from whom they regularly purchased taxicabs and other products and services to refrain from advertising in plaintiff's newspaper, and they caused many such individuals and firms who had theretofore regularly advertised in plaintiff's newspaper to refrain from doing so.

(c) They sponsored the founding of "The N. Y.

Hackman," and, instead of purchasing bulk copies of plaintiff's newspaper and distributing the same free of charge to the fleet taxicab drivers who were the principal readers of plaintiff's newspaper, they acquired bulk copies of "The N. Y. Hackman," and distributed such copies to such fleet taxicab drivers free of charge, thereby diverting from the plaintiff's newspaper a very substantial portion of its circulation. After the fleet taxicab drivers had been organized into a labor union and a collective bargaining agreement had been executed between the fleet taxicab companies and the said labor union, defendants caused publication of "The N. Y. Hackman" to be discontinued, and, in its place, they sponsored the founding of the "ITOC News," which they purchased in bulk copies and distributed free of charge to taxicab owner-drivers.

(d) They attempted to divert and did in fact divert to "The N. Y. Hackman" and subsequently to the "ITOC News," a very substantial portion of the advertising which had formerly been placed in plaintiff's newspaper.

(e) They libeled and slandered plaintiff's newspaper and plaintiff's president, falsely charging that plaintiff was controlled by and "fronting for" an individual who, for various reasons, had become objectionable to important segments of the taxicab industry and who was a competitor of major advertisers in plaintiff's newspaper. They misrepresented plaintiff's editorial policy and its president's opinions on many issues affecting the taxicab industry and they falsely charged that plaintiff's editorial policy and its president's opinions were inimical to the best interests of the said industry. They also falsely charged that plaintiff's president did not act in a proper and ethical manner for a professional journalist.

(f) They wilfully and arbitrarily withheld from plaintiff news of interest to taxicab owners and drivers and other persons connected with and interested in the taxicab industry, and they caused individuals and firms who might otherwise have given plaintiff such news to refrain from doing so.

(g) They did all of the foregoing, among other reasons, because plaintiff refused to submit to pressure from them to change its editorial policy, especially during the drive to organize fleet taxicab drivers into a labor union.

21. As a result of the said combination, and acts of defendants, plaintiff has sustained severe damage and injury to its business and property in the actual amount of Six Hundred Eighty-four Thousand and 00/100 ($684,000.00) Dollars, and, under Section 4 of the Sherman Anti-Trust Act (15 USC §4), plaintiff is entitled to recover from defendants three-fold damages in the sum of Two Million Fifty-two Thousand and 00/100 ($2,052,000.00) Dollars, together with interest and the costs and disbursements of this action, including reasonable attorneys' fees.

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

22. This cause of action arises under the anti-trust laws of the State of New York, more particularly the Donnelly

Anti-Trust Act, General Business Law §340, as hereinafter more fully appears, and, jurisdiction exists by virtue of the doctrine of pendent jurisdiction.

23. Plaintiff repeats each and every allegation contained in paragraphs "2" to "17," inclusive, "19" and "20" of this complaint, with the same force and effect as if fully set forth herein.

24. The said combination, conspiracy and acts of defendants restrained and/or monopolized trade and commerce in the dissemination of news and other activities within and/or related to the taxicab industry in the State of New York as well as in and among the several states, and thereby defendants also violated Section 1 of the Donnelly Anti-Trust Act, General Business Law §340.

25. As a result of the said combination, conspiracy and acts of defendants, plaintiff has sustained severe damage and injury to its business and property in the sum of Six Hundred Eighty-four Thousand and 00/100 ($684,000.00) Dollars, and plaintiff is entitled to recover such sum from defendants, together with interest and the costs and disbursements of this action.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

26. This cause of action arises under the common law of the State of New York, and jurisdiction exists by virtue of the doctrine of pendent jurisdiction.

27. Plaintiff repeats and reiterates each and every allegation contained in paragraphs "2" to "17," inclusive, "19" and "20" of this complaint with the same force and effect as if more fully set forth herein.

28. The said combination, conspiracy and acts of defendants were entered into and performed by them maliciously and without justification.

29. As a result of the said combination and conspiracy and acts of defendants, plaintiff's business and property have been damaged in the actual sum of Six Hundred Eighty Four Thousand and 00/100 ($684,000.00) Dollars, and plaintiff is entitled to recover such sum from defendants for its compensatory damages. Plaintiff is further entitled to recover from defendants the sum of One Million Three Hundred Sixty-eight Thousand and 00/100 ($1,368,000.00) Dollars as punitive damages, or total damages in the sum of Two Million Fifty-two Thousand and 00/100 ($2,052,000.00) Dollars, together with interest and the costs and disbursements of this action.

FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS, EXCEPT INDEPENDENT TAXI OWNERS COUNCIL, INC., UNITED TAXI OWNERS GUILD, INC., HOSYND PUBLICATIONS, INC., SALVATORE BARON, ALFRED J. MARKS AND ALFRED ZEFF

30. This cause of action arises under Section 1 of the Sherman Anti-Trust Act, 15 USC §1, as hereinafter more fully appears.

31. Plaintiff repeats each and every allegation contained in paragraphs "2," "3," "4," "7," "8," "9," "10," "13," and "16," of this complaint, with the same force and effect as if fully set forth herein.

32. Commencing in or about the year 1958, and continuing thereafter until the filing of this complaint, defendants, their agents, servants and employees, did knowingly and unlawfully, combine, conspire, agree and have a tacit understanding, together with each other and with various other persons and firms to restrain trade or commerce in the hiring of taxicab drivers in and among the several states, and they did in fact restrain such trade and commerce.

33. The said combination, conspiracy and acts of defendants were in violation of Section 1 of the Sherman Anti-Trust Act, 15 USC §1.

34. It was a part of the said combination and conspiracy and the object and purpose thereof to suppress and eliminate competition in the hiring of taxicab drivers, and more particularly to suppress and eliminate the hiring by fleet taxicab companies of taxicab drivers already employed by other fleet taxicab companies.

35. As part of the said combination and conspiracy and to effectuate its object and purpose, defendants agreed among themselves to refrain from placing any advertisements in any trade papers serving the taxicab industry, including plaintiff's newspaper,

for the purpose of recruiting taxicab drivers, and defendants did in fact refrain from placing virtually any such advertisements.

36. As a result of the said combination, conspiracy and acts of defendants, plaintiff has lost a very substantial amount of advertising income and profits which it could have otherwise reasonably expected to earn. Plaintiff has thereby sustained severe damage and injury to its business and property in the actual amount of One Hundred Twenty Thousand and 00/100 ($120,000.00) Dollars, and, under Section 4 of the said Sherman Anti-Trust Act, 15 USC §4, plaintiff is entitled to recover from defendants three-fold damages in the sum of Three Hundred Sixty Thousand and 00/100 ($360,000.00) Dollars, together with interest and the cost and disbursements of this action, including reasonable attorneys' fees.

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS, EXCEPT INDEPENDENT TAXI OWNERS COUNCIL, INC., UNITED TAXI OWNERS GUILD INC., HOSYND PUBLICATIONS, INC., SALVATORE BARON, ALFRED J. MARKS AND ALFRED ZEFF

37. This cause of action arises under Section 1 of the Donnelly Anti-Trust Act, General Business Law, §340, as hereinafter more fully appears, and jurisdiction exists by virtue of the doctrine of pendent jurisdiction.

38. Plaintiff repeats each and every allegation contained in paragraphs "2," "3," "4," "7," "8," "9," "10," "13,"

"16," "32," "34" and "35," of this complaint, with the same force and effect as if fully set forth herein.

39. The said combination, conspiracy and acts of defendants restrained trade and commerce in the hiring of taxicab drivers in the State of New York as well as in and among the several states, and thereby defendants also violated Section 1 of the Donnelly Anti-Trust Act, General Business Law §340.

40. As a result of the said combination and conspiracy and acts of defendants, plaintiff has lost a very substantial amount of advertising income and profits which it could have otherwise reasonably expected to earn. Plaintiff has thereby sustained severe damage and injury to its business and property in the actual sum of One Hundred Twenty Thousand and 00/100($120,000.00) Dollars, and plaintiff is entitled to recover such sum from defendants, together with interest and the costs and disbursements of this action.

Wherefore, plaintiff demands judgment against defendants and each of them as follows:

(a) in the first cause of action, in the sum of Two Million Fifty-two Thousand and 00/100 ($2,052,000.00) Dollars, together with interest and the costs and disbursements of the action, including reasonable attorneys' fees;

(b) in the second cause of action, in the sum of Six Hundred Eighty-four Thousand and 00/100 ($684,000.00) Dollars, together with interest and the costs and disbursements of the action;

(c) in the third cause of action, in the sum of Two Million Fifty-two Thousand and 00/100 ($2,052,000.00) Dollars, together with interest and the costs and disbursements of the action;

(d) in the fourth cause of action, in the sum of Three Hundred Sixty Thousand and 00/100 ($360,000.00) Dollars, together with interest and the costs and disbursements of the action, including reasonable attorneys' fee; and

(e) in the fifth cause of action, the sum of One Hundred Twenty Thousand and 00/100 ($120,000.00) Dollars, together with interest and the costs and disbursements of the action.

BUTLER, JABLOW & GELLER
Attorneys for Plaintiff

By Stanley Geller
A Member of the Firm

Office and P.O. Address
400 Madison Avenue
New York, New York 10017

Answer of Metropolitan Taxicab Board of Trade, Inc., *et al.*

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
---x

TAXI WEEKLY, INC.,

Plaintiff,

-against-

METROPOLITAN TAXICAB BOARD OF TRADE, INC., TAXICAB BUREAU, INC., EMPIRE TAXICAB COOPERATIVE, INC., INDEPENDENT TAXICAB OWNERS COUNCIL, INC., UNITED TAXI OWNERS GUILD, INC., HOSYND PUBLICATIONS, INC., JACK PLOTSKY, MORRIS HEIT, BENJAMIN BOTWINICK, SALVATORE BARON, ALFRED J. MARKS, GEORGE McINTYRE, ALFRED ZEFF, MORRIS LEFKOWITZ, NATHAN LEVINE, MILTON MARKS, LEON MURSTEIN, GERALD NAREN, IRA SUCHMAN and LEONARD SCHAFFRAN,

Defendants.
---x

Civil Action
No. 66-2827

ANSWER

Defendants Metropolitan Taxicab Board of Trade, Inc., Benjamin Botwinick, Taxicab Bureau Inc., Morris Heit, Jack Plotsky, Milton Marks, Gerald Naren, Leon Murstein, Ira Suchman and Leonard Schaffran, answering the complaint herein, by their attorneys, Friedlander, Gaines & Ruttenberg, allege as follows:

1. Deny each and every allegation contained in paragraphs designated "1", "7", "8", "9", "10", "15", "16", "17", "18", "19", "20" and "21" of the complaint.

2. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "2" and "3" of the complaint, except admits Taxi Weekly is a weekly newspaper.

3. Deny each and every allegation contained in paragraph "4" of the complaint, except admit that Metropolitan Taxicab Board of Trade, Inc. and Empire Taxicab Cooperative, Inc. are trade associations and are New York membership corporations.

4. Deny any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "5", "6", "11", "12", "13" and "14" of the complaint.

5. Deny each and every allegation contained in paragraphs designated "22", "24", and "25" of the complaint.

6. Defendants repeat, reiterate and reallege each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2"-"17", inclusive, and "19" and "20" of the complaint with the same force and effect as if herein set forth in full, as and for their answer to paragraph designated "23" of the complaint.

7. Deny each and every allegation contained in paragraphs designated "26", "28" and "29" of the complaint.

8. Defendants repeat, reiterate and reallege each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2"-"17", inclusive, and "19" and "20" of the complaint with the same force and effect as if herein set forth in full, as and for their answer to paragraph "27" of the complaint.

9. Deny each and every allegation contained in paragraphs designated "30", "32", "33", "34", "35" and "36" of the complaint.

10. Defendants repeat, reiterate and reallege each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2", "3", "4", "7", "8", "9", "10", "13" and "16" of the complaint with the same force and effect as if herein set forth in full, as and for their answer to paragraph designated "31" of the complaint.

11. Deny each and every allegation contained in paragraphs designated "37", "39" and "40" of the complaint.

12. Defendants repeat, reiterate and reallege each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2", "3", "4", "7", "8", "9", "10", "13", "16", "32", "34" and "35" of the complaint with the same force and effect as if herein set forth in full, as and for their answer to paragraph designated "38" of the complaint.

AS A FIRST AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

13. The complaint fails to state a cause of action upon which relief may be granted.

AS A SECOND AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

14. The causes of action herein are barred because of the statute of limitations.

WHEREFORE, defendants demand judgment against plaintiff dismissing the complaint in its entirety, together with the costs and disbursements of this action.

Dated: New York, New York
September 22, 1966.

Yours, etc.,

FRIEDLANDER, GAINES & RUTTENBERG, ESQS.

By ______________________
A Partner
Attorneys for Defendants Metropolitan
Taxicab Board of Trade, Inc., Benjamin
Botwinick, Taxicab Bureau Inc., Morris
Heit, Jack Plotsky, Milton Marks,
Gerald Naren, Leon Murstein, Ira
Suchman and Leonard Schaffran
Office and Post Office Address
221 West 57th Street
New York, New York 10019

TO: BUTLER, JABLOW & GELLER, ESQS.
Attorneys for Plaintiff
400 Madison Avenue
New York, New York 10017

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

- X

TAXI WEEKLY, INC.,

Plaintiff,

-against-

METROPOLITAN TAXICAB BOARD OF TRADE, INC., TAXICAB BUREAU, INC., EMPIRE TAXICAB COOPERATIVE, INC., INDEPENDENT TAXICAB OWNERS COUNCIL, INC., UNITED TAXI OWNERS GUILD, INC., HOSYND PUBLICATIONS, INC., JACK PLOTSKY, MORRIS HEIT, BENJAMIN BOTWINICK, SALVATORE BARON, ALFRED J. MARKS, GEORGE McINTYRE, ALFRED ZEFF, MORRIS LEFKOWITZ, NATHAN LEVINE, MILTON MARKS, LEON MURSTEIN, GERALD NAREN, IRA SUCHMAN and LEONARD SCHAFFRAN,

Defendants.

- X

CIVIL ACTION
FILE NO.
66-2827

ANSWER ON BEHALF OF GEORGE McINTYRE, HOSYND PUBLICATIONS, INC. and ALFRED ZEFF

Defendants, GEORGE McINTYRE, HOSYND PUBLICATIONS, INC. and ALFRED ZEFF, answering the complaint of the plaintiff herein, by JESSE K. ROBINSON, their attorney, respectfully alleges as follows:

AS TO THE FIRST CAUSE OF ACTION

1. Denies any knowledge or information sufficient to form a belief as to the allegations of the complaint contained in paragraph "2".

2. Admits that plaintiff, as alleged in paragraph "3", publishes a weekly newspaper called "Taxi Weekly" and a monthly publication called "Taxicab Industry/ Auto Rental News", but denies knowledge or information sufficient to form a belief as to the balance of the allegations contained in the said paragraph "3".

3. As to paragraph "5" of the complaint, defendants herein admit that the defendants, Independent Taxicab Owners Council, inc. and United Taxi Owners Guild, Inc. were and now are trade associations, composed of taxi-

cab owners-drivers; but denies knowleege or information sufficient to form a belief as to the balance of the allegations contained in paragraph "5" of the complaint.

4. As to the allegations of the complaint contained in paragraph "6" thereof, defendants admit all of said allegations, except those allegations which allege that the "The N.Y. Hackman" and "ITOC News" was and now is directly in competition with plaintiff's newspaper, "Taxi Weekly".

5. Denies each and every allegation of the complaint contained in paragraph "7" thereof.

6. Denies knowledge or information sufficient to form a belief in the allagations of the complaint contained in paragraphs marked "8", "9", "10", "11", and "12".

7. As to paragraph of the complaint marked "13", defendants deny that George McIntyre was the public relations man for the defendant, Metropolitan.

8. Defendants deny knowledge or information sufficient to form a belief as to the allegations of the complaint contained in paragraphs marked "14", "15" and "16".

9. Defendants deny each and every allegation of the complaint contained in paragraphs marked "17", "18", "19", "20" and "21".

AS TO THE SECOND CAUSE OF ACTION

10. As to the allegations contained in paragraph "23" of the complaint, defendants repeat and re-allege the admissions and denials as hereinbefore set forth as they affect the paragraphs cited, as though fully set forth herein.

11. Defendants deny each and every allegation of the complaint contained in paragraphs marked "24" and "25".

AS TO THE THIRD CAUSE OF ACTION

12. As to the allegations contained in paragraph "27" of the complaint, defendants repeat and re-allege the admissions and denials as hereinbefor set forth as they affect the paragraphs cited, as though fully set forth herein.

13. Defendats deny each and every allegation of the complaint contained in paragraphs marked "28" and "29".

AS TO THE FOURTH CAUSE OF ACTION AS IT APPLIED TO DEFENDANT, GEORGE McINTYRE

14. As to the allegations contained in paragraph "31" of the complaint, said defendant repeats and realleges the admissions and denials as hereinbefore set forth as they apply to the paragraphs therein cited , as though fully set forth herein.

15. Defendant, GEORGE McINTYRE, denies each and every allegation of the complaint contained in paragraphs marked "32", "33", "34", "35" and "36".

AS TO THE FIFTH CAUSE OF ACTION AS IT APPLIED TO DEFENDANT, GEORGE McINTYRE

16. As to the allegations contained in paragraph "38" of the complaint, said defendant repeats and realleges the admissions and denials as hereinbefore set forth as they apply to the paragraphs therein cited, as though fully set forth herein.

17. Defendant, GEORGE McINTYRE, denies each and every allegation of the complaint contained in paragraphs marked "39" and "40".

WHEREFORE, the defendants, GEORGE McINTYRE, HOSYND PUBLICATIONS, INC. and ALFRED ZEFF, demand judgment against the plaintiff dismissing the complaint herein, together with the costs and disbursements of this action.

JESSE K. ROBINSON
Attorney for Defendants,
George McInture, Hosynd Publications, Inc. and Alfred Zeff

JESSE K. ROBINSON
Office & P.O. Address
250 West 57th Street
New York, N.Y. 10019

TO:

BUTLER, JABLOW & GELLER, Esqs.
Attorneys for Plaintiff
400 Madison Avenue
New York, N.Y. 10017.

Robbins Stationery Co., Inc. - 25 Warren Street, New York City

TAXI WEEKLY

Pleading

INDIVIDUAL VERIFICATION

STATE OF NEW YORK,
CITY OF } *ss.:*
COUNTY OF

, being duly sworn, deposes and says that he is the in the within action; that he has read the foregoing and knows the contents thereof; that the same is true to h own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Sworn to before me, this
day of 19

CORPORATION VERIFICATION

STATE OF NEW YORK,
CITY OF } *ss.:*
COUNTY OF

, being duly sworn, deposes and says that he is the of the herein that he has read the foregoing and knows the contents thereof, and that the same is true to h own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the is because the said is a corporation, and deponent an officer thereof, to wit its

Sworn to before me, this
day of 19

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
CITY OF } *SS.:*
COUNTY OF

being duly sworn, deposes and says, that he is over the age of years. That on the
day of 19
at No.
in the
he served the foregoing
upon
by delivering to and leaving personally with said
a true copy thereof.

Deponent further says, that he knew the person served as aforesaid, to be the person mentioned and described in said as the therein.

Sworn to before me this)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK
CITY OF } *SS.:*
COUNTY OF

, being duly sworn, deposes and says that he is the attorney for the above named herein.
That on the day of
19 he served the within
upon
the attorney for the above named by depositing a true copy of the same securely enclosed in a post-paid wrapper in the Post-Office—a Branch Post-Office—a Post Office Box regularly maintained by the United States Government at
in said County of
directed to said attorney for the
at No.
N. Y., that being the address within the State designated by h for that purpose upon the preceding papers in this action, or the place where h then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of years.

Sworn to before me this)

Sir :

PLEASE TAKE NOTICE *that the within is a true copy of a*

this day duly filed and entered in the office of the clerk of the

Dated, N. Y., 196

Yours, & c.,

JESSE K. ROBINSON

Attorney for ________________

(Office and Post Office Address)

250 West 57th Street

Borough of Manhattan New York 19, N.Y.

To Esq.,

Attorney for

Sir :

PLEASE TAKE NOTICE *that*

of which the within is a true copy, will be presented for settlement and signature herein to Mr. Justice

one of the Justices of the within named Court at

Borough of

in the City of New York

the day of 196

at o'clock in the forenoon.

Dated, N. Y., 196

Yours, & c.,

JESSE K. ROBINSON

Attorney for ________________

(Office and Post Office Address)

250 West 57th Street

Borough of Manhattan New York 19, N.Y.

To Esq.,

Attorney for

Clerk Civil Action # 66-2827

Index No. __________ 19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAXI WEEKLY, INC.,

Plaintiff,

-against-

METROPOLITAN TAXICAB BOARD OF TRADE, INC., TAXICAB BUREAU, INC. et al.,

Defendants.

ANSWERS ON BEHALF OF GEORGE McINTYRE, HOSYND PUBLICATION INC. and ALFRED LEFF.

JESSE K. ROBINSON

Attorney for Defendants

(Office and Post Office Address)

250 West 57th Street

Borough of Manhattan New York 19, N.Y.

CIRCLE 7-2274

To Esq.,

Attorney for

Service of a copy of the within

is hereby admitted.

Dated, N. Y., 196

Attorney for

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

TAXI WEEKLY, INC.,

Plaintiff,

-against-

METROPOLITAN TAXICAB BOARD OF TRADE, INC.,
TAXICAB BUREAU, INC., EMPIRE TAXICAB
COOPERATIVE, INC., INDEPENDENT TAXICAB
OWNERS COUNCIL, INC., UNITED TAXI OWNERS
GUILD, INC., HOSYND PUBLICATIONS, INC.,
JACK PLOTSKY, MORRIS HEIT, BENJAMIN
BOTWINICK, SALVATORE BARON, ALFRED J.
MARKS, GEORGE McINTYRE, ALFRED ZEFF,
MORRIS LEFKOWITZ, NATHAN LEVINE, MILTON
MARKS, LEON MURSTEIN, GERALD MARKS, IRA
SUCHMAN and LEONARD SCHAFFRAN,

Defendants.

Civil Action
No. 66-2827

ANSWER

Defendant, MORRIS LEFKOWITZ , answering the complaint herein, by his attorneys, FRIEDLANDER, GAINES & RUTTENBERG, alleges as follows:

1. Denies each and every allegation contained in paragraphs designated "1", "7", "8", "9", "10", "15", "16", "17", "18", "19", "20" and "21" of the complaint.

2. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs designated "2" and "3" of the complaint, except admits Taxi Weekly is a weekly newspaper.

3. Denies each and every allegation contained in paragraph "4" of the complaint, except admits that Metropolitan Taxicab Board of Trade, Inc. and Empire Taxicab Cooperative, Inc. are trade associations and are New York membership corporations.

4. Denies any knowledge or information sufficient to form a belief as to each and every allegation contained in

paragraphs designated "5". "6". "11", "12". "13" and "14" of the complaint.

5. Denies each and every allegation contained in paragraphs designated "22", "24" and "25" of the complaint.

6. Defendant repeats, reiterates and realleges each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2" - "17", inclusive, and "19" and "20" of the complaint with the same force and effect as if herein set forth in full, as and for his answer to paragraph designated "23" of the complaint.

7. Denies each and every allegation contained in paragraphs designated "26", "28" and "29" of the complaint.

8. Defendant repeats, reiterates and realleges each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2"-"17", inclusive, and "19" and "20" of the complaint with the same force and effect a[illegible] herein set forth in full, as and for his answer to paragraph "27" of the complaint.

9. Denies each and every allegation contained in paragraphs designated "30", "32", "33", "34", "35" and "36" of the complaint.

10. Defendant repeats, reiterates and realleges each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2", "3", "4", "7", "8", "9", "10", "13" and "16" of the complaint with the same force and effect as if herein set forth in full, as and for his answer to paragraph designated "11" of the complaint.

11. Denies each and every allegation contained in paragraphs designated "37", "39" and "40" of the complaint.

12. Defendant repeats, reiterates and realleges each and every denial, denial upon information and belief and admission made hereinabove with respect to paragraphs designated "2", "3", "4", "7", "8", "9", "10", "13", "16", "32", "34" and "35" of the complaint with the same force and effect as if herein set forth in full, as and for his answer to paragraph designated "38" of the complaint.

AS A FIRST AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

13. The complaint fails to state a cause of action upon which relief may be granted.

AS A SECOND AFFIRMATIVE DEFENSE TO ALL CAUSES OF ACTION

14. The causes of action herein are barred because of the statute of limitations.

WHEREFORE, defendant MORRIS LEFKOWITZ demands judgment against plaintiff dismissing the complaint in its entirety, together with the costs and disbursements of this action.

Dated: New York, New York,
Nocember 3, 1966.

YOURS, etc.,

FRIEDLANDER, GAINES & RUTTENBERG

By:

A Partner

Attorneys for Defendant, MORRIS
LEFKOWITZ,
Office and Post Office Address:
221 West 57th Street
New York, New York 10019

TO:
BUTLER, JABLOW & GELLER,
ESQS.
Attorneys for Plaintiff
400 Madison Avenue, New York, N.Y. 10017.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAXI WEEKLY, INC.,

Plaintiff,

- v -

METROPOLITAN TAXICAB BOARD OF TRADE, INC., ET AL.,

Defendants.

66-Civ.2027

#37257

U. S. DISTRICT COURT
FILED
DEC 15 1970
S. D. OF N. Y.

APPEARANCES:

CASEY, LANE & MITTENDORF
Attorneys for Plaintiff
26 Broadway
New York, N. Y. 10004
By: Alan R. Wentzel, Esq.
Of Counsel

FRIEDLANDER, GAINES, RUTTENBERG & COHEN
Attorneys for Defendants
1140 Avenue of the Americas
New York, N. Y. 10036
By: Edward Charney, Esq.
Of Counsel

CROAKE, D. J.

MEMORANDUM

Defendants in the above case have moved to dismiss plaintiff's complaint on grounds that the Court lacks subject matter jurisdiction over the action. The motion is denied,

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Plaintiff's action was commenced in September of 1965 when it brought suit in a private treble-damage antitrust action against defendants for alleged violations of the Sherman Act. Defendants, in urging dismissal, claim that the acts alleged to have been committed by them do not have the requisite effect upon interstate commerce necessary to sustain the jurisdiction of this Court.

Our finding is to the contrary. Before going out of business in 1966, plaintiff was the publisher of Taxi Weekly, a trade publication. Although much of the newspaper's circulation, advertising, and news coverage was local, between 100 and 200 copies were distributed throughout the United States on a weekly basis and much of its advertising revenue came from national corporations. In addition, articles on the taxi industry outside of New York were sometimes carried.

It has long been held that Congress, in enacting the Sherman Act, intended to exercise its jurisdictional powers to the fullest. Atlantic Cleaners and Dyers Inc. v. United States, 286 U.S. 427 (1932). Accordingly, this Court finds that the above-mentioned facts, which are not in dispute, are enough to sustain a finding of "interstate commerce" within the meaning of § 1 of the Sherman Act.

Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940).

United States v. Employing Plasterers Association of Chicago, 347 U.S. 186 (1954).

Defendants' motion to dismiss for lack of subject matter jurisdiction is denied.

SO ORDERED.

Dated: New York, N. Y.
December 14, 1970

Thomas F. Croake
THOMAS F. CROAKE
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------------------------------x

:Before:
:HON. THOMAS P. GRIESA D.J.,
: and a Jury

TAXI WEEKLY, INC., et ano,

Plaintiffs,

vs.

METROPOLITAN TAXICAB BOARD OF TRADE, INC., et al.,

Defendants.

66 CIVIL 2827

---------------------------------x

New York, July 7,8,9,10,11, 19[illegible]

STENOGRAPHER'S MINUTES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

TAXI WEEKLY, INC., et ano,

Plaintiffs,

-versus-

METROPOLITAN TAXICAB BOARD OF
TRADE, INC., et al,

Defendants.

-----------------------------------x

66 Civ. 28[illegible]7

Before:

HON. THOMAS P. GRIESA,

District Judge
And a Jury.

New York, N.Y.
July 7, 1975 - 10:00 a.m.

APPEARANCES:

CASEY, LANE & MITTENDORF, ESQS.,
Attorneys for the Plaintiffs,
BY: ALAN R. WENTZEL, ESQ. and
CHARLES M. PRATT, ESQ.

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SULL, ESQS.,
Attorneys for the Defendant Metropolitan
BY: MAURICE NESSEN, ESQ. and
MORTON J. TURCHIN, ESQ.

DINKES, MANDEL & DINKES, ESQ.,
Attorneys for the Defendant Estate of Nathan Levine
BY: WILLIAM DINKES, ESQ.

CHRISTOPHER C. MCGRATH, JR., ESQ.
Attorney for the Defendant Independent Taxicab
Owners Council

eb/lf

(A jury and two alternates were duly impaneled and sworn.)

THE COURT: We'll have a short recess.

(Recess)

(In the Robing Room)

THE COURT: Let's start with the list of defendants. I am going to make two corrections to this. I will eliminate the reference to Nathan Levine as being a member and director, or a member of Metropolitan, and I will indicate the decease of Alfred Marks. And I take it there are no other corrections to this.

MR. NESSEN: I didn't ask. Would you go and ask Mr. Botwinick whether this is a true description of him. If it is wrong he will have my head. McIntyre is dead.

THE COURT: Subject to that, I take it there is nothing else. Now, what about this factual statement.

MR. NESSEN: Your Honor, I don't want to be finicky. I would very much like you to remove the word "primarily."

THE COURT: Well --

MR. NESSEN: I'm sorry to --

THE COURT: I guess there were a few hundred copies that might have gone out. I am not trying to weight the Interstate Commerce thing.

MR. WENTZEL: Your Honor, a few hundred was specifically mentioned by Judge Croake in his opinion.

THE COURT: Yes, but we're not getting into those fine points here.

MR. NESSEN: Well, all right, I won't press it then.

I don't know about the top of page two, and I was told when I saw it in the stip over the phone that was not accurate.

MR. DINKES: I don't think they ever ran three shifts.

MR. MC GRATH: Before you get to that --

THE COURT: You certainly ran more than one shift.

MR. NESSEN: I'm not so sure about some of them at this time either, your Honor. All I know is I read that sentence off to one of my --

THE COURT: Can we say sometimes?

MR. NESSEN: I don't think it matters. Let them testify.

THE COURT: If we can begin to get in the habit of having these really unessential facts stipulated we can save ourselves some time and I think the only picture is I'm sure that sometimes ran two shifts per day.

MR. MC GRATH: On the bottom of page one the figure

eb/lf

was never 5000 for owner-operators, it was more in the area of 4500 and of that number there were always substantial number of several hundred which were in transition, that is being sold, transferred and what not.

MR. NESSEN: The exact figures are in the stipulation

THE COURT: Well, is it going to help to read the jury 11,788? It doesn't make that much difference.

(Discussion off the record)

THE COURT: Let's put on the record we've agreed on some changes to be made in the list of defendants to be circulated to the jury and those changes will be made. We have also agreed to some changes in my factual statement, and I will, before the opening statements, make an introduction to the jury. I will pass out the sheets with the list of defendants. I will read the revised statement of facts and we'll make an appropriate introduction to the jury and the lawyers can open.

Where did you get -- Mr. Wentzel, this thing about Mr. Botwinick, you said, and I assumed you had a basis for it, you said in your proposed stip that he was a member of the executive committee, he was executive director of Metroplitan.

MR. WENTZEL: Yes, sir.

THE COURT: Is that untrue?

MR. WENTZEL: No. That's in the minutes of Metropolitan.

THE COURT: We better get Botwinick in here.

MR. WENTZEL: It is in the minutes of the annual meeting, your Honor.

MR. NESSEN: Your Honor, we're going to dispute that fact.

THE COURT: He either had that title or he didn't.

(Botwinick entered the courtroom)

THE COURT: Mr. Botwinick, they say that the minutes show that you were a member of the executive committee and executive director.

MR. BOTWINICK: Neither one. I attended meetings of the executive committee by invitation but I was not. I was an accountant and was not an execut've director. The only executive director we ever had was a guy by the name of High Soloman.

MR. WENTZEL: I have a copy of it right here.

THE COURT: That's a matter of dispute. We'll have to have proof on that. Okay. Thank you very much. We'll see you in about five minutes.

(Recess)

(In open court - jury present)

eb/lf

THE COURT: Ladies and gentlemen, let me give you some preliminary instructions. The order of the case will be as follows:

The plaintiff's attorney will make an opening statement, and the defense attorneys will make whatever opening statements they choose. After that the plaintiff's proof will be put on and after that the defense proof will be on, and after that the attorneys sum up what they feel has been proven and what has not been proved. After that I instruct you on the law. And finally you deliberate. Now, it is very important for you to realize that the jury's deliberations are a very solemn thing and occurs only at the end of the case after you have heard all the evidence, the summations and the instructions on the law which means that you don't deliberate bit by bit in the hall, in the washroom, at lunch, at home. It means that you must not, and this is very important to remember, discuss the case, the issues in the case, the personalities in the case in any way before you officially deliberate. Keep an open mind and please don't discuss the case until that moment. Don't discuss it with your friends and neighbors and family at home, don't discuss it among each other. Obviously you have to talk but talk about anything else, the weather, the rainstorm, anything else, but not the case, until that moment arrives. And keep an open mind at all times during the trial. Listen to all the evidence, all the arguments of the lawyers and, of course, everything else that you are given.

What is evidence? Evidence consists of testimony from the witness stand, it consists of exhibits introduced into evidence, it may consist and I think it will consist in substantial measure in this case in stipulated facts. One of your main jobs in the usual case, and I am sure it will be in this case, is to evaluate the credibility of the witnesses. The events in this case took place ten, eleven years ago, and even before, so you are going to have to evaluate how good the memory of the witness is, and, of course, his honesty. How do you do that?

Well, you do it in the courtroom like you do it outside, and even though you are not conscious of doing it outside, we all are evaluating people's credibility. You look at them, you evaluate whether you can trust them, whether their memory is good, you judge by their appearance and then you go beyond the appearance because we know appearance can be deceiving. A person can look honest and not be honest so you certainly start with the appearance of a person and then beyond that you judge how probable or improbable his story is, how does it match up with other things you have heard, other evidence, and so forth. You evaluate whether the witness has made inconsistent statements, and if he's made inconsistent statements, how important is that inconsistency. Is it the kind of thing that's inconsistent that all of us might do and still be trustworthy or does it really shape his credibility. Does he have any bias or interest, any compassion or pressure that might cause him to color the truth. All of those are factors you consider.

During the course of the trial it is my job to make the rulings of law and rulings on matters of procedure which means that as evidence is offered, and questions are asked, there may be objections, and I have got to rule on those objections.

At times I may call the lawyers over to the side of the bench out of the hearing of the jury. This is not to be rude to you but the purpose to be able to discuss these questions fully out of the presence of the jury so that you won't be hearing evidence if it is later excluded.

The lawyers object, one or the other of the others object to some evidence. He is not trying to conceal from you what you ought to hear. He is trying to do his job and enforce the rules of evidence.

Your job is to find the facts, and apply the rulings of the Court on the law to those facts and come up with a verdict at the end of the case and really I'm sure that there will be specific questions addressed to you and you will find that your verdict will take the form of answers to those questions.

You must not, under any circumstances, try to infer or defuse what my view of the facts or my view of the verdict is or should be from anything I say in the trial. You and I have different functions. You are the finders of the fact. You render the ultimate verdict. I am to make rulings of law and procedure, and I don't have any desire or wish or intention to intrude on your function and I'm sure you don't on mine.

It is extremely important to bear in mind every minute of this case that you are not to be governed by compassion, pressure, likes or dislikes, emotional features of any kind. If the case was to be governed by that, there would be no point in having evidence at trial. We would all be wasting our time so you have got a duty here to apply the rules of law and the evidence, and listen to the evidence fairly, and that's what the decision in the case is going to be based on and nothing else.

This case, I suppose if it were allowed to go in a very leisurely fashion could take a long time, but I don't think a long time is necessary or even helpful, and what I am working with the attorneys to do is this: there are many things in the case, many factual features of the case which are really not in dispute, and I'm going to read you in a minute some background which is stipulated and which is not in dispute.

At various times during the course of the trial there will be other items which come up and that have to be presented to you and on which there is no real dispute. I'm going to try, and the lawyers are going to try to limit their arguments and limit their evidence to matters which are in dispute, which you really have to decide,, and we'll try to make those issues clear to you.

And if we do that, I think we can spend our time, have the testimony on things that are worth having testimony on, but not go on and on and on having questions and answers on things about which nobody really is taking issue. Another thing which I will tell you at this point is that I read to you a fairly long list of defendants, trade associations, taxi fleet owners, other individuals.

Now, I worked up a list of the defendants and I'm going to give each of you such a list and you can have it in your hands during the trial, and as you hear names referred to, it might help you to have this to look at so that you don't have to constantly try to keep in mind a whole list of individuals and organizations.

Let me say that this doesn't tell the whole story about all these organizations. It is just an initial guide and will be supplemented by other more detailed evidence of the dates and activities. But this is just an introduction, something you will have in your hand. I brought it up this morning. The lawyers had some corrections in it. There is a little retyping being done and Xeroxing, but just as soon as the corrected version is back, I will distribute it to you.

Now, it is the job of the lawyers to make opening statements and it is not my job but I am going to present to you now what I am labeling "Factual Statement Number 1." This gives you some background of undisputed facts. This is to some extent general. There are a few details. It is just a start but it may permit the lawyers to get more quickly into the guts of the case and not waste time on background so I will read to you this first factual statement of stipulated facts as follows:

"Plaintiff Taxi Weekly, Inc., was incorporated in 1945. It was founded by one Abraham Wysinger. The plaintiff corporation published a weekly newspaper called "Taxi Weekly" directed primarily to the taxicab industry in

New York City.

"The plaintiff corporation also published a monthly magazine for national distribution called "Taxi Industry Auto Rental News."

"In 1966, some 20 years after its founding, the plaintiff corporation ceased publication of both "Taxi Weekly" and the monthly magazine and went out of business.

"During the times relevant to this action, there were about 11,708 licensed taxicabs operating in New York City. 11,708 licensed taxicabs operating in New York City.

"About 6800 of these were owned by about 90 fleet owners. Some of the fleets had several hundred cabs.

"The rest of the licensed taxicabs in New York City were individually owned by owner-drivers.

"The approximately 6800 fleet cabs sometimes ran two shifts per day, so the fleet owners employed more drivers than the number of cabs they owned.

"The newspaper, "Taxi Weekly," was read widely by participants in the taxicab industry in New York City.

"In the first half of 1964, prior to a circulation decline about which there will be evidence, "Taxi Weekly" circulation averaged 11,000 per issue.

"About two/thirds or more of the weekly circulation was to fleet owners who would pay for these subscriptions receive the copies in bulk and then distribute the copies to their drivers. Each issue of "Taxi Weekly" contained eight or more pages. The paper contained numerous items and editorials related to the taxi industry.

"The paper would have information about road conditions, traffic regulations, air and train arrivals, theater ending times, and so forth.

"Taxi Weekly" carried advertising of various kinds. The types of advertising are indicated by the following:

"Auto dealers advertised their brand of taxicabs.

"Banks advertised loans for buying new taxicabs.

"There were advertisements of gas stations and dealers in products such as taxi meters, car radios, et cetera.

"There were advertisements of hotels with the intention that cab drivers would recommend them to customers.

""Taxi Weekly's" accounting was on a fiscal year ending March 31st. The last fiscal year before the circulation decline about which there will be evidence was the fiscal year ending March 31, 1964.

"The circulation revenues of "Taxi Weekly" for the fiscal year ending March 31, 1964, were $43,236.

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"The advertising revenues for this fiscal year were $64,070."

Other figures will be presented to you about net profits of the business after expense, and I won't try to get into that now. They are obviously lesser figures.

"The plaintiff Seymour L. Peterman was first employed by "Taxi Weekly" in December, 1956.

"At this time Peterman was 30 years old. At this time the founder of "Taxi Weekly," who was editor and publisher of the paper, Abraham Wysinger, was 64 years old.

"Peterman was initially employed by "Taxi Weekly" as a salesman of advertising space.

"In March, 1957, Peterman became business manager.

"Prior to 1958, Wysinger owned all the stock of "Taxi Weekly, Inc.

"In 1958 Wysinger sold half his interest in the company to Peterman for $15,000."

That's all of the stipulation that I will read to you at the present time. The basic issues in the case about which you will hear testimony and argument are, as far as I can understand it, first what was the relationship between "Taxi Weekly" and the fleet owners' industry? That will become important in ways you will see.

Then there is an issue about the relationship between Peterman and Wysinger and the dispute that grew up between them.

Then there is an issue about a dispute between Peterman and the fleet owners. And there will be issues about the value of the business. I think the lawyers will be able to confine themselves largely to those issues. There is also an issue about which you will hear evidence regarding not advertising in "Taxi Weekly" for drivers. I think that will be presented at some point. But those are the basic issues, and I think the lawyers and I know the jury will be prepared, if I interrupt the lawyers at any time to try to restrict the proof, it is not in any critical spirit of the lawyers, it is just to try to help the trial progress along in a clearer and quicker fashion.

All right, Mr. Wentzel, you may go ahead.

MR. WENTZEL: May it please the Court, ladies and gentlemen of the jury, you have no doubt forgotten after all of these names but I am Alan Wentzel and I represent the plaintiff Taxi Weekly, Inc. As the judge has explained to you, it is customary at this point in the case for the attorneys for both sides to tell you in more detail what the case is about and what they expect to prove.

The comments I make and the defense make, of course, aren't evidence. They are merely statements of what they expect to prove during the course of the trial.

This case involves an alleged violation of the Anti-Trust laws which prohibit contracts, combinations and conspiracies in restraint of interstate commerce and trade.

The specific kinds of conspiracy which we allege in this case is that the defendants agreed with each other, conspired with each other, if you will, to put pressure on the industry newspaper, "Taxi Weekly," to adhere to their views, and they were unable to succeed in that endeavor so they agreed with each other to cancel their subscriptions, to boycott that newspaper in an effort to force it out of business so it could be silenced in the industry.

They not only boycotted the newspaper themselves and got their other fleet owners to go along with them, but we expect to prove that they put pressure on the advertisers in the "Taxi Weekly," and these advertisers, of course, were people who dealt with the defendants. They were vendors of taxicabs, or taxi meters and so forth, who had business dealings with the defendants. We expect to prove that the defendants pressured those advertisers to

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take their advertising out of "Taxi Weekly" in an effort to force "Taxi Weekly" out of business.

We'll also prove that the defendants, in order to pressure the advertisers against "Taxi Weekly," spread rumors, malicious rumors, about the newspaper and about its ownership. All of this we claim, and the purpose and the effect of driving the plaintiff out of business, of silencing this small newspaper from being heard in violation of both the federal and the state Anti-Trust laws.

I would like to tell you a little more about the facts which we expect to prove in support of these claim

First, in 1964 there were two or three predominant issues that were going on in the taxi industry. At that time the major issue was that of a proposed fare increase. Some of you may recall that up until about 1964 the fare for taxicabs was 25 cents on the initial drop of the meter and then additional nickels after that.

Well, in 1964 there had not been a fare increase for some ten years or so and a proposal arose to increase the fare by raising the drop charge from 25 cents to 35 cents.

The fleet owners supported this fare increase, and the issue which arose between the fleet owners and the governmental officials, which at that time was the city council and the mayor's office which hadn't approved the fare increase, everybody wanted to go to the drivers and there was some controversy over whether in fact all of that ten cents would go to the drivers.

The owners-drivers on the other hand, of course, would get all of any fare increase, and for a time they took the position of wanting a much larger increase so there was a bit of a split within the taxi community itself for a period of time.

Now, how does "Taxi Weekly" fit into all of this? Well, as I said, that was a major issue in the industry at the time so, of course, it was reported in the front page of "Taxi Weekly" as developments would occur in the course of a year and "Taxi Weekly" reported the fleet-owners' position, it reported what the mayor's office had to say, it reported what the owner-drivers' position was, but throughout 1964 it supported editorially the fleet-owners' proposal of a ten cent fare increase.

Now, a second issue which had been present in the taxicab industry for some years before 1964, and was coming to a crescendo at that time late in 1965 and 1966 was the question of unionization of the drivers. I think it is fair to say that the fleet owners opposed unionization quite vociferously and, of course, the drivers were being organized or attempted to be organized by the various unions. There at one time was a teamster group that came in and then later a group of taxi driver union came in and eventually succeeded in unionizing the fleet taxi drivers.

That was another issue which was reported in "Taxi Weekly" as events occurred.

Some years before 1964, one of the largest fleet owners in New York City was owned by a man named Morris Markin. Mr. Markin was the head, I believe he was the president or some chief officer of a company called Checker Motors, and Checker Motors is the only United States automobile manufacturer that makes a purpose-built taxicab. That is, it is built to be a taxicab. We're all familiar with the big Checkers that we see around the city at various times, and they are still, of course, being sold today to those who wish to buy them in the taxicab industry.

Well,. Mr. Markin, as we'll show, was a very controversial figure within the taxicab industry, and, of course, his interests would be opposed to those of the manufacturers of what are called stock-built cars, the regular Dodge, Chevrolet and Ford sedans because, naturally, they were competing with each other for the business of selling taxicabs in New York City.

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So how does this fit into "Taxi Weekly"? Well, in a minor way I can give you an example of one of the features of "Taxi Weekly" was that it would carry a listing of how many of each manufacturer's cars were then licensed as taxicabs in the city and this, of course, was very important for manufacturers to use in other cities in their sales efforts.

Now I mentioned briefly before that there were attempts made to influence and to pressure "Taxi Weekly" into following the desires and views of the defendants. Now, what do you mean by that? We'll prove that defendant Botwinick, who was a chief spokesman for the Metroplitan Taxicab Board of Trade, the principal fleet owner trade association, attempted to pressure Mr. Peterman, the head of the "Taxi Weekly," into following only the view of his group, the fleet owners, when he reported things in his newspaper, not to print stories as an honest newspaper should, by showing that Metroplitan Taxicab Board of Trade says this, but to adopt that position as "Taxi Weekly's" own regardless of whether he thought it was propaganda, fact or otherwise. This was resisted, and understandably so.

The next thing that happened was that Mr. Peterman was met with a dissolution attempt by his co-parnter, his partner Mr. Wysinger. At that time they each owned five shares of the corporation.

Mr. Wysinger attempted to buy out Mr. Peterman. Mr. Peterman again resisted. He wanted to run his business, and he eventually bought out Mr. Wysinger later in 1964.

Well, the next thing that happened was quite extraordinary. As I mentioned, the taxi fare increase was the occasion of a good deal of discussion and controversy in the taxi industry, and there were numerous meetings going on within the industry at that time in order to discuss the positions to be taken, hearings to be held, statements to be made to the press and so forth.

Well, one such meeting occurred in the afternoon of July 13, 1964, in Mr. Botwinick's office, and we'll show you who was in attendance at that meeting.

Among them were, I believe, Mr. Baron, another defendant, the head of one of the owner-driver groups. It was a joint meeting of the Metropolitan Fleet owners and the owner-driver groups getting together to try to arrive at a joint position.

We'll introduce minutes that will show who was present. And we'll also introduce minutes of a meeting later in that same day of the owner-driver group that Mr. Baron headed. And that meeting lasted until 11:00 p.m. on

July 13, 1964.

The very next day, in a space of 25 minutes, "Taxi Weekly" got five telephone calls from members of Metropolitan cancelling their subscriptions which they had held for many months and many years previously.

Two more came in by mail that day. Several more the next day. Several more the next day.

That rash of cancellations continued until "Taxi Weekly's" business was virtually wiped out insofar as its subscriptions, its circulation was concerned.

Now, it is our contention, and we expect to prove, that this was no simple switch of allegiance the way you or I might change from the "Times" to the "News" if we didn't like one or the other newspaper. We expect to prove that the defendants acted in concert. They agreed with each other because how else could such an extraordinary event occur where the five of them would suddenly get the desire to cancel their subscriptions all at once. We'll show that before this happened there was pressure put on "Taxi News." We'll show that there was no other paper for the fleet owners at that time for them to switch to. And we'll show that later several of the defendants themselves admitted that "Taxi Weekly" was a fine newspaper. They just went along with the wishes of the leaders of the fleet owner organization.

In the fall of 1064 and 1965 "Taxi Weekly" continued to publish every week, and then another series of events began: the advertisers of "Taxi Weekly" suddenly began to cancel, and they cancelled under extraordinary circumstances. One of these cancelled at such a late time of the year that he was forced to pay under his agreement a higher rate than all the previous advertisments that he had placed during the course of the year whereas he would have had the lower rate had he continued on it for the short balance of the year.

After he cancelled, another felt that his advertising wasn't reaching the people he wanted to reach and he actually asked "Taxi Weekly" for his subscription list so he could send out mailings.

Along about this time another newspaper was founded called "The New York Hackman." There was a need for a newspaper for the fleet owners and drivers, and it was founded by two gentlemen, the defendant McIntyre, who was the public relations man for Metroplitan, and Alfred Zeff, who, until a month or so before, had been an employee of "Taxi Weekly."

We expect to prove to you that Mr. Zeff tried to steal the subscription list of "Taxi Weekly" in order to set up this newspaper.

This newspaper lasted only as long as the unionization drive, and it was a propaganda sheet for the fleet owners and nothing more.

Now, a word more on what I have said about the advertisers of "Taxi Weekly." In 1965 and 1966 Mr. Peterman went to see a number of these advertisers. A number of them admitted to him that they had been spoken to and pressured by fleet owners and they named names of fleet owners.

Some of them told him that they had heard, and the defendants he spoke to also told him, by defendants I mean from the fleet owners, they also said they had heard a rumor going around that Morris Markin, the head of Checker Motors, controlled "Taxi Weekly", owned it, ran it. Well, this, of course, was a disastrous rumor going around for a newspaper that is trying to be independent and secure advertising from a competitor of "Taxi Weekly" such as Dodge, Chevrolet and Chrysler and so forth.

The result of all this was that the advertisers dropped out even though several of them conceded that "Taxi Weekly" was the best medium for them to reach the entire industry, not just the fleet owners but also the owner-drivers at the same time because each owner-drive was a potential customer for products which they advertised.

Finally, in addition we expect to prove that after the attempts to pressure "Taxi Weekly" failed, the defendants began to withhold news from "Taxi Weekly" so it could obtain news from within the industry and print it in the newspapers.

Now after we prove these facts, we'll introduce evidence of the damage that we claim was caused by the defendants in a conspirary to drive "Taxi Weekly" out of business. That conspiracy was successful. "Taxi Weekly," we'll show you its revenues went down in 1965. It suffered a loss the first eight months of 1966 and finally it had to cease publication, and it had to cease publication not only of the newspaper, the weekly taxi newspaper which was directed primarily to the industry here in New York, but also had to cease publication of its magazine which was circulated throughout the nation because the two were dependent on each other. They had the same personnel and so forth and one couldn't survive, the magazine couldn't survive without the newspaper.

We'll offer expert testimony to establish what the market value was of the "Taxi Weekly," the going concern value, as of July, 1964, when we claim that this conspiracy started. Going concern value is a catchy little phrase that we lawyers use in these kinds of cases, but we'll explain what that means. It means basically what would a willing buyer have paid for this business in the open market if it were for sale.

We expect to prove that the market value was at least $250,000 for "Taxi Weekly" at that time. And we'll show you through expert testimony how that amount is calculated, by taking the earnings of "Taxi Weekly," by establishing a fair amount for the salary of the president, the editor and publisher by making an adjustment for how much taxes would have to be paid by the buyer and calculating out how much he would earn and then comparing that with the industry in general and how much other publishing companies newspapers, trade publications, and so forth, sold for in making a comparison between "Taxi Weekly" and those companies and through expert testimony, a man who is skilled and who devoted his life to this various subject, we'll discuss this figure.

We also expect to introduce into evidence an alternate theory of damages showing the actual profits that were lost by "Taxi --

THE COURT: Why don't you not get into those. We take testimony on those elements.

MR. WENTZEL: Now, the judge mentioned that there

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is also an issue in this case concerning a refusal to advertise for drivers by fleet owners. This relates only to the fleet owner defendants. And it is a separate claim which we have made in this action.

Prior to 1964 or so fleet owners would occasionally place ads in "Taxi Weekly" seeking new drivers. On those occasions when that happened meetings were called -- let me strike that. Meetings were generally held monthly at the Met Taxicab Board of Trade, and on the occasions when fleet owners would place ads for drivers, Mr. Peterman would be invited to a meeting the following month or so, or sometime after the ad was placed. And at that time there would be a large amount of criticism of that advertising, and this would have a definite effect on fleet owners who were looking for new drivers and wanted to place ads in "Taxi Weekly" with the result that we claim and expect to prove that the fleet owners agreed among themselves not to advertise in "Taxi Weekly," and that, of course, affected "Taxi Weekly's" revenues. It was another form of a boycott of "Taxi Weekly" and we expect to prove damages that resulted from that conspiracy as well.

Now, you have heard me mention various things that have been admitted to Mr. Peterman by fleet owners, defendants, and advertisers. In 1965 and 1966 Mr. Peterman talked to a large number of people in the industry, and discussed the reasons why he was being boycotted. He wanted to get his business going again. He knew from the initial cancellation that the fleet owners must have gotten together.

He was alone against the leaders of a powerful industry in the city, and if they were going to be successful in driving him out of business, he wanted to be able to prove that. And so when he went to these meetings with these people, he recorded conversations. He tape recorded them. We have those tapes. We'll play them in court and you can listen to them so there can be no doubt about what was said in those conversations.

In conclusion, we'll ask you to find that the defendants violated the Anti-Trust laws by conspiring to cancel subscriptions, by pressuring "Taxi Weekly," by pressuring advertisers, spreading malicious rumors about "Taxi Weekly" all with the purpose and effect of driving this company out of business.

We'll ask you to find that defendants violated the Anti-Trust laws by conspiring to refuse to advertise for drivers in "Taxi Weekly," and thus caused lost profits to "Taxi Weekly."

Finally we'll ask you to return a verdict in cb/lf

damages for the loss of plaintiff's profits, and for the destruction of his business. We'll introduce specific evidence as to the amount that you should find.

Now there is one personal word which Judge Griesa has permitted me to add. I am under an order from another court in another case to participate in a number of proceedings so before the case is over it may be necessary for me to leave for a short time and to come back or I may have to leave for a day or so and I want you to understand that it is not because I have no interest in this case. Mr. Pratt will take over in my absence. I just wanted to explain that to you in case you observe me being absent for a certain period of time.

THE COURT: It is a few minutes before one so we'll take our luncheon recess now, but I think before we do I am going to pass out the sheet to you and just have you sit here for two or three minutes to look this over and then you can leave it in your seats and refer to it as you need to during the trial so I would like this marked as Court Exhibit A and would you please pass copies of it to the jury.

xxx (Court Exhibit A marked for identification.)

MR. NESSEN: Your Honor, while this is going on could we make some motions on the record?

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THE COURT: All right.

MR. NESSEN: Your Honor, I would like to move to dismiss the fourth and fifth causes of action here. I don't think the elements of a conspiracy directed properly in interstate commerce in a conspiracy that was directed at this plaintiff was stated.

THE COURT: I will deny that.

(In open court)

THE COURT: Ladies and gentlemen, we'll recess until two o'clock. So be back here promptly at two and we usually run until about 4:30 in the afternoon. I may adjourn a few minutes early because I have another hearing and we'll run at least until about 4:15, and our court day will begin tomorrow at ten o'clock.

(Recess to 2:00 p.m.)

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AFTERNOON SESSION

2:00 p.m.

(Jury present)

THE COURT: All right, Mr. Nessen.

MR. NESSEN: May it please the Court, Madam Forelady, and ladies and gentlemen of the jury:

You have heard from Mr. Wentzel this morning about the plaintiff "Taxi Weekly" claims it will prove at trial.

It is [illegible] turn to tell you what the defendants I represent say the evidence will be before you in this case. I urge, as Mr. Wentzel did, to remind you what is not evidence. What Mr. Wentzel said this morning is not evidence. It is only what, as the judge told you, you hear on the witness stand and see coming into evidence, documents, that's what you are to base your decision on. But my aim here is to sort of make a prediction to you what that evidence will be. It is sort of giving to you an overall picture so as the evidence comes in, as you see cross examination, where I am going, so you can have an idea of that in the order of things, Mr. Wentzel goes first, the plaintiff goes first, and the judge has already told you to wait and hear every side, hear Mr. McGrath's side, hear all of your sides and then when you are ready to deliberate, put it all together and we in our summations, and the Court in its charge we hope, to help you put it all together.

Mr. Turchin and I, we represent several clients in this case, several defendants. Although those defendants have common views, views that I say will show that "Taxi Weekly" is not entitled to one red cent in this case. Nonetheless, I tell you, and the judge will tell you, that just because we represent a group of defendants doesn't mean that the actions of one defendant or the actions of one are the will of all. That's a matter of convenience, money and so forth, so I will urge you, and the judge will urge you to go down the list that you have and I will tell you in a moment who I represent.

You will see on that list Met Taxi Board of Trade. We represent Met. We'll sort of use that as a short name for you. It is an association, as the proof will show, as we all agree, of taxicab fleet owners. It is an association much like I dare say the bar association, or when workers get together in a union. Let there be no mistake, and we're proud of it, the Met Taxi Board of Trade was the spokesman and is a spokesman of only one element, one segment of the taxi industry: the fleet owners. They are the owners who own more than one cab.

The evidence at trial will show that Met Taxicab Board of Trade doesn't and didn't, and never pretended to

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represent an independent single taxicab operator, the man who owns his own cab. It didn't pretend to represent Jimmy Hoffa, or the union, or the Teamsters. The evidence will be that the leaders and elected officials of Met weren't elected to be neutral on the issues that the fleet owners felt were important to them.

[redacted] In our system, as I am sure the Court will tell you, people have a right to associate together. It is a protection given us by the First Amendment to the Constitution.

Now on that list you have you will see, let's see, Mr. Morris Lefkowitz. We represent him. Mr. Milton Morris, who is here in the courtroom. And ladies and gentlemen, every so often some of the defendants will come here. It is not that they are not interested in the result, they are vitally interested, but business and other things [redacted] away, but they will come from time to time and they are concerned about this.

Leon Murstein. And you have a man by the name of Gerald Naren, and he is here in the courtroom today. Jack Plotsky, Leonard Schaffran, Ira Suchman and the estate of Morris Heit, and they are all our clients. And so is Mr. Benjamin Botwinick on the other side, and he was here this morning.

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And as I say, each of these defendants -- you have to go down and say what is the proof as to each, although fortunately there is common ground, and so I can defend them here and on that common ground we're going to win this case.

Now, plaintiffs claim in this Anti-Trust case, you heard he had two of them, or Taxi Weekly has two of them. Let me address myself to the first one first.

Claim is Taxi Weekly, Inc., a corporation, ran a newspaper, a weekly newspaper addressed to the taxi industry in New York. It was subsidized, as the proof will show, and as everybody knew in the industry, by the fleet owners, some of them my clients.

Mr. Peterman and Taxi Weekly, Inc., claims that the fleet owners ganged up on Taxi Weekly in 1964 and told it not to deliver Taxi Weekly to their garages where the fleet owners, as Judge Griesa has pointed out to you, would distribute these Taxi Weekly papers to their drivers free of charge.

Mr. Peterman says that that was unreasonable, an unreasonable restraint of trade. He says that furthermore pressure was put on them, this vague pressure was put on advertisers later in 1965 and 1966, not to advertise in Taxi Weekly. And he says that was unreasonable. And that's a violation of federal laws.

That's the first claim, really. In other words, that there was an illegal restraint of trade forced, Taxi Weekly, Inc. out of business.

I say that the evidence that you will hear from this stand will show that that claim is specious. I will say that's a false claim, and that the evidence will show that's a false claim brought by a corporation or by Mr. Peterman who controlled that corporation who had violated his trust, and for whatever reasons they are, and I will go into that in a minute, whatever was underlying these disputes, actually, introduced with his judgment in doing. And I will say to you, and the evidence at trial will show, that my clients had a right, a constitutional right, indeed, to choose whom they made their spokesman.

Now, what this comes down to, as the evidence will show, is that Taxi Weekly, Mr. Peterman, in operating Taxi Weekly, was disloyal, and not disloyal only to our clients but even to his own partner. He was fighting for the insistence, really, and has been fighting in this case for the insistence that fleet owners represented by us continue for ever and a day, at the pain of being sued here, to subsidize his newspaper, no matter how disloyal.

THE COURT: You let your voice drop and I want

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to hear it, too.

MR. NESSEN: I'm sorry, your Honor.

Now, there are two elements to this damage, to this claim. The first is liability. Was there, in fact, an unreasonable restraint of trade, and the second is, damages.

Now, you will hear a great deal about damages for it is customary in these cases not to break the trial up, and as his Honor will tell you in the charge to you, the fact that you hear about damages in the ordinary course doesn't mean that you ever will reach that issue. You reach the damage issue in your deliberations only, but only if you find liability. But as I say, the facts are such, they are so entwined that it really wouldn't be economical to break up this trial, first to try liability and then damages.

Now let's focus briefly, if I may, on the facts, the basic facts.

Taxi Weekly, Inc., is a corporation that was created in 1945 by Mr. Abraham Wysinger. Actually Mr. Wysinger's association with the taxi industry went back to 1932 when Herbert, whoever, I believe, was president of the United States.

Mr. Wysinger founded the newspaper with the help of the fleet owners That newspaper was in the beginning and always remained until the spring of 1964 the organ and the spokesman forthe fleet owners of taxis in New York City. As Mr. Wentzel observed to you, the taxi industry is divided into two. I like to think there are two unequal branches in the sense that the fleet owners had in those days more drivers on the road in numbers.

On the other hand, there were the taxi owners who operated their own cabs. And you might guess, and it was true in 1964, you might guess just in my telling you that the fleet owners and the taxicab independent drivers didn't always see eye to eye on issues that were confronting taxi operations in New York City.

Now, on your sheet -- I think it is wonderful that you have it -- you will see on the first page United Taxi Owners' Guild, Inc., otherwise known as UTOG. Now that's an association of those taxicab owner-drivers, not fleet operators, and there is the Independent Taxi Owners Council, otherwise known as ITOC, and actually you find UTOG was from time to time a member of ITOC. It was a council of various guilds and associations of the independent taxi operators, not the fleet owners.

And you will find, actually, that at one crucial point in 1964, in the spring of 1964, this UTOG actually

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resigned from ITOC over two issues, essentially actually one issue, to say, ladies and gentlemen of the jury, that the fleet owners conspired in 1964 with ITOC and UTOG is just farfetched.

Now you will see, just to bring the narrative of Taxi Weekly in focus, that over the years Mr. Wysinger ran this newspaper and owned all of the shares up to 1958. And Mr. Wysinger recognized the fact, recognized the fact that Mr. Wentzel minimized but what the evidence won't: that the fleet owners subsidized this newspaper. That's the truth, and the editorial policies and what was done by Mr. Wysinger and then later Mr. Peterman until 1964, reflected that. The vital circulation of this newspaper depended entirely on the fleet owners and on the fleet owners' money, and that was true in 1932, and it was true in 1964.

You will find that in fact something like 80 percent of the circulation money came from the fleet owners, subsidizing them the way I told you they did.

Now, the remaining percentage, the newspaper went elsewhere throughout the industry. But the lifeblood remained the fleet owners' money.

Now, it is a fact, it is a fact that both Mr. Wysinger and later Mr. Wysinger and Mr. Peterman, were invited to meetings of the fleet owners. They were invited to attend and participate in meetings of Metropolitan. In fact, at those meetings the people on the dais, the leaders of Metropolitan, actually solicited business for Taxi Weekly. No other newspaper got such treatment. And there is a reason for that. Not only that, but the fleet owners solicited advertisers for Taxi Weekly. And there is a reason for that. Why? Why would fleet owners do this? You will know why on the evidence, and your common sense will tell you, tell you what Mr. Peterman and Mr. Wysinger knew: the Weekly was nothing but the instrument of the fleet owners, to get their views, to their drivers and to the public, and that was true right up through the spring of 1964.

Now, you will hear evidence in this case, chiefly on the question of damages, but it is a fact, I don't think I have to belabor it. Advertisers come to newspapers because newspapers have readership. They have circulation. If you cut off the circulation, then you cut off the advertisers. And that's what happened here. By a change of policy, by a decision made, I say irrationally, by Mr. Peterman, but it doesn't matter, rationally or irrationally, by his decision, he decided to make this newspaper into something different from what it had been. And you will find, just as I suppose to illustrate it, if National Review tomorrow changed from being conservative to supporting the Americans for Democratic Action, it would lose its leadership, too. There is nothing wrong with being a partisan. That's the American system. But there is a consequence for doing that.

Now, you heard from Mr. Wentzel, and there will be testimony concerning the monthly magazine, Taxi Weekly, Inc., that participant corporation, published two journals or magazines, Taxi Weekly which you will be mostly concerned with, and then Taxi Industry Auto Rental News. This Taxi Industry Auto Rental News magazine was a profitable little magazine. It was the brainchild of Mr. Wysinger. We didn't subsidize it. It had its own neat little life. And nowhere, including in Mr. Wentzel's opening statement, is there an accusation that we conspired to put that magazine out of business. We didn't. And the statistics will show that it went along its merry way.

Now, Mr. Peterman -- he came into the business of Taxi Weekly in 1956. He was hired and was, in fact, an advertising salesman by industry. He went over and he worked helping run the day-to-day business. And gradually he tells us, and I have no reason to dispute it, that he became the business manager sometime in 1957,

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In 1958, at a time when the business of Taxi Weekly, the newspaper, was just what I said it was, that is, being a sort of public relations arm of the fleet owners, when it was thriving at that, Mr. Peterman bought a fifty percent interest in Mr. Wysinger's newspaper and in the company, and he paid $15,000 in cash. Actually, that amounted, and I think we'll prove that out of pocket it was around $11,300. That was the fair evaluation put on the business by Mr. Peterman and Mr. Wysinger at the time when the newspaper remained what it was and what it should have remained.

Mr. Peterman did become the associate publisher of the magazine and later the newspaper. Eventually he moved up to the title of publisher of the magazine and assumed the role of both editor and publisher of the Weekly. Mr. Wysinger, who, by contract, by contract that you will have before you, was given overall control of the company, but remained president of the Taxi Weekly.

And, as I say, from the time Mr. Peterman came in to 1964, the Taxi Weekly remained in the business that it was created for, and that it always was under Mr. Wysinger.

Now, it is a fact that ITOC had its own organ. It is a fact that the union, the Teamsters Union, Jimmy

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Hoffa's union, which was attempting to organize the taxi drivers at that time had its own publications. So when I say, and reiterate, when I say that the newspaper was the handmaiden or whatever you want of the fleet owners, that's not meant to be a derogatory term. People are entitled to it. As Mr. Wentzel said this morning, the fleet owners needed a newspaper.

Now, what was happening behind the scenes? You didn't hear a lot of that from Mr. Wentzel this morning but you will hear it from the stand. You will hear it from cross examination particularly. Behind the scenes Mr. Wysinger and Mr. Peterman were not getting along. The fact is, and I think it is a fair statement, Mr. Peterman tried to push Mr. Wysinger out. In fact, in 1960 Mr. Peterman took Mr. Wysinger's name off the masthead while Mr. Wysinger was in Florida, and Mr. Wysinger heard about it and had to cajole him and to force him to put his name back. Mr. Peterman gave an excuse. The reason he put the name off the masthead, he said, was so that he could get out of jury duty.

Well, you may believe that or you may not but I think it illustrates the point. There was this bickering.

What was involved, I submit, it is hard toexplore a man's mind, but as Judge Griesa said, you are supposed

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to judge people as you see them. You probably are going to have to try to think about motive and evaluate a person. But the fact is that in some way, somehow, Mr. Peterman believed that he should be the spokesman, that he should run Taxi Weekly, and that the old man who created this newspaper, he was not going to get any dictation from him, and there is no dispute -- in a civil case we have pretrial depositions -- there is no dispute that Mr. Peterman was angry about articles that Mr. Wysinger put in, articles that dealt and that were in favor of the taxi industry fleet owners' position on crucial issues.

Now, let me say a word and I will see if I can cut this short. As Mr. Wentzel said, there were issues that were very meaningful in the spring of 1964 to the taxi industry.

One of them was the fare increase. The payrolls were going before the City Council and Mayor Wagner was mayor back then in those days before John Lindsey, and everybody agreed pretty much that there should be a taxi fare increase.

The fleet owners, and there is nothing so vital, really, in this kind of thing, as the economic issues -- the fleet owners were for a ten cent rise and no more. Mr. Botwinick admitted, conceded, said that the fleet owners were doing very well, and there was no economic reason for a higher increase. And they proposed that the ten cents go to the driver, five cents in direct payments and five cents in fringe benefits, a creation of these fringe benefits that you all are aware of these days.

Now what about independent taxi driver, the people who supposedly conspired with us? They were for a higher increase, and they were demonstrating, and urging for a higher increase. That was tearing the industry apart. There was another issue, and there is no question of this.

There is another issue. I told you about UTOG and ITOC. In the spring of 1964 UTOG, this group of owner-drivers, was negotiating actively, and was making payrolls, and had drafted material to become a member of the Teamsters Union. The Teamsters Union under Jimmy Hoffa which had been turned down by a vote of the taxicab people.

Now, ITOG and the fleet owners were deadset against bringing in the Teamsters Union. They would not be strongarmed into that. And you will see that as a result of this, UTOG moved away from ITOC, and what is certain is that there was no conspiracy between fleet owners and owner-drivers in 1964. And, in fact, the union, the Teamsters Union came out against the ten cent pay raise. They were

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against it on a usual trip, and I suppose, you know, this is the way America works, one force against the other, because if you give a raise to the taxi drivers, why, the Teamsters don't get credit for it.

In any event, what happened in Taxi Weekly? Now Mr. Peterman maintains, according to the opening statement of Mr Wentzel, that he tried to remain neutral. He tried to remain a newspaper.

Actually, what was happening is that there was a dispute behind the scenes, and this issue, this issue became a wedge by which Mr. Peterman was trying to drive Mr. Wysinger out of the business. That's clear. And, now, whey he did it I can't really tell you. You will have to judge by yourself. What is clear is that Mr. Wysinger wanted to support the fleet owners' position, and, indeed, inserted an editorial in favor of the fleet owners' position, and to that Mr. Peterman took violent exception.

Now, there is --

THE COURT: You have been a half hour. Would you just take another few minutes and try to boil it down?

MR. NESSEN: Your Honor, with the hope that I would outline it, my other counsel can truncate theirs.

THE COURT: Well, I wouldn't have that in the way of openings from the other two but I think you can shorten it.

MR. NESSEN: I will try, your Honor.

Now you have heard a name Morris Markin mentioned in the opening statement of the plaintiff. Morris Markin, as he said, was a person who had a monoply on the creation of the big cabs, the custom built cabs, the Checker cabs, and you are going to find that Morris Markin was supporting the UTOG position, and not the fleet owners' position. And you are going to find, I assume, that when you get to the facts, that that certainly surely would annoy the fleet owners in this case.

Well, not only did we expect and hope, not only would we seek to have the Taxi Weekly which we supported support us, but it didn't happen. What happened when there was a crucial test for Mr. Peterman, for whatever reason, whether he had sided with Mr. Markin or whether it was because of his dispute with Mr. Wysinger, when we put him to the crucial test, he refused, he refused outright to print our position, and for the first time in July, for the first time, ladies and gentlemen of the jury, in July, the weekly magazine that we supported, that was supposed to be our arm, our public relations arm, that we gave to the -- we had to put in a full page ad, and you will see that, and that's what caused people to run away on July 14th. They were annoyed as could be. It wasn't any conspiracy with

UTOG and ITOG, it was because Mr. Peterman had decided that he was going to bite the hand that had been feeding him, and Mr. Zeff, and Mr. Wysinger warned him that he shouldn't do that.

Now let me just sum up on that and just say, therefore, the running away, the cancellation of advertisers when there is no circulation, that is reasonable, it is in the tradition of our American system. We don't have to hire Mr. Peterman. We don't have to appoint one man as our spokesman if he is going to remain disloyal.

Now as to the damages on this issue, well, let me say, first of all, all you are to consider is damages to the entity Taxi Weekly. The theory of the plaintiffs, and you heard Mr. Wentzel tell you about it, is that Taxi Weekly was a going business Therefore, you use certain legal arguments. The fact of the matter is Taxi Weekly was not a going business or you cannot use that evaluation. You cannot use it because Mr. Peterman decided to change the formula of the magazine, and you will see that from their expert as well as my own experts. You will find that the damages here, if you ever reach them, is something like one thousand, two thousand dollars. And I ask you to look with me on cross examination of Mr. Peterman at the tax returns of Taxi Weekly, Inc., and the earnings, the

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net earnings in 1961 through 1964. The fiscal years. $304 one year. $170 the next. 6,100 another. For an average of $2,191. And I say to you, if that's what's on the tax returns and on the financials, it is time, it is time that we stick by what we say to the government under oath.

Now, you will hear talk, I am sure, on plaintiff's case that you add back. Wait until you hear my cross examination. Wait until you see what plaintiff and hear what plaintiff's own expert wrote. Keep an open mind, and you will find that those damages are truly nominal. And when you hear from our expert, a man who lives and buys businesses, when you hear him evaluate, and when you hear another expert who knows how businesses are traded in, you will be convinced of what your heart tells you, what the figures say on the tax return, that this is a nominal business.

Now I just want to say one word, if I may and I will forego what I had planned to say at greater length. The second claim: that's the claim that Taxi Weekly was hurt and was damaged by an illegal conspiracy directed at it not to publish, not to put in advertisement for hiring of drivers.

Well, unfortunately, you are going to have to hear something about the taxi industry and the regulation of the hack bureau, and the regulations that tried to do away with the pirating that was going on of drivers and you will find without question that even if there was such a conspiracy directed at Mr. Peterman's newspaper, then it was a reasonable regulation. But beyond that, and I think it is the measure of Mr. Peterman's disloyalty, and the measure of all his claims, beyond tha Mr. Peterman and Mr. Wysinger went to meetings, they were solicited and solicited, and were helped in their magazine, and in their newspaper by the solicitation subscriptions. We were supporting this newspaper, and now Mr. Peterman goes and says, "Gee, yes, I knew that they had refused or were declining to advertise, and that was to put me out of business."

Well, that's nonsense. It is ingratitude, and that second claim I tell you is the measure of the entire case.

The facts in this case, after we're through, will involve you in saying, I predict, "We must be responsible for our acts for our choices in life for what we put in tax returns and what we say and do." It will involve your saying that we must accept the consequences of our choices. If Mr. Peterman chose to change his role as spokesman for the fleet drivers, no man can say that he had

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no right to do that, he had a right to do that. But, likewise, no man could say that Mr. Peterman had a right to force my clients to pay him for that change.

And you will say the consequences of acts are that there is no liability on either of these claims, and surely there is but nominal damage even if there were liability.

Thank you.

THE COURT: Mr. Dinkes?

MR. DINKES: May it please the Court, Madam Forelady, ladies and gentlemen of the jury:

My name is William Dinkes, in case you have forgotten. I will not speak anywhere near as long as my two predecessors. I am here to tell you that I represent the widow and children of one Nathan Levine. Ronald Stoppel sitting in the front row over there is one of the executors of Nathan Levine and, indeed, was his son-in-law. Nathan Levine who passed on July 1, 1973, prior to that time had been the president and a stockholder of three corporations that operated taxicabs in New York City. The names of these corporations were 57th Street Management Corporation, Sixth Street Management Corporation, and Yankee Service Corporation. And for sometime prior to his death, and, indeed, for sometime prior to 1964, these

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corporations had been subscribers to the plaintiffs' newspaper, Taxi Weekly. Taxi Weekly being a newspaper --

THE COURT: We have had that.

MR. DINKES: Yes.

THE COURT: Just state your position.

MR. DINKES: I am going to state it right now, your Honor.

The newspaper was purchased by the corporation in bulk and distributed to the drivers free of charge.

Now, we were going to show you, and it has been conceded, and I think there is no dispute about it, that in the years 1964, 1965 and for some years prior thereto, neither Mr. Levine or any of the corporations which he represented had been members of Met Taxicab Board of Trade, one of the co-defendants in this case. Indeed, when Mr. Nessen told you that the Met was the spokesman for the industry, I would qualify that by saying that Met was not a spokesman for the corporations that Mr. Levine was concerned with. They weren't his counsel, they weren't his accountants. He had his own.

However, these corporations did, in fact, subscribe to Taxi Weekly, and we're going to show you and I think it's been conceded that the dates that Mr. Wentzel referred to, such as July 13, 1964, at that time and the

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cancellations on July 14th, the corporations, 57th Street, Sixth Street and Yankee, didn't cancel their subscriptions in July of 1964.

As a matter of fact, there was a cancellation by them but not until November 4th of 1964.

We're also going to show you and the evidence will prove to you that by September Mr. Peterman of 1964, Mr. Peterman had surely shown his true colors, that there was all the more reason to cancel in September but they didn't cancel, they continued on. They continued on because it was the only newspaper available to them at the time. And not until November when the new newspaper, which the judge told you about, the New York Hackman, was already published, not only they had a choice of newspapers, did these corporations cancel. And, therefore, it is absurd to think that my client was a co-conspirator or even a co-mingler with any of the alleged co-defendants in this case.

Now I have one other thing to say.

As you know by reason of the fact that Nathan Levine is dead he will not be here to testify. He was deposed. That means that his testimony before his death was elicited by the plaintiffs. He has testified under oath. And I will read to you portions of his testimony that was given prior to his death, and you will hear and we'll show you that he didn't conspire with anybody, that he didn't influence anybody, and that he is in this case -- we can't really figure out why he is in this case as a defendant.

I ask you to sit back, listen to all the evidence, and we'll have a chance to talk at the end of the case.

Thank you very much for your patience. And at the end I will ask you to bring in a verdict in favor of my client, the estate of Nathan Levine. Thank you very much.

THE COURT: Mr. McGrath.

MR. MC GRATH: Mat it please the Court, counsel for the plaintiff, and counsel for the co-defendants, and ladies and gentlemen of the jury:

As previously indicated to you, I represent the organizations that were comprised of owner-operators. They were essentially two organizations in 1964. One was UTOG, the other was ITOC. And ITOC was the what we call the umbrella organization. It comprised at one time or another all of the independent groups that had gathered together and joined, as was their right, due to geographic reasons, due to economic reasons, or for any other reason that they joined together. Some joined together in a little group of owner-operators because they were all from Brooklyn or from the Bronx or from North Manhattan or South

Manhattan. And over a period of years different groups formed and came under the umbrella of ITOC.

In 1964 the president of ITOC was Alfred J. Marks. Alfred Marks is now dead. And he is sued here individually, and appears by his widow, Dorothy J. Marks, who is the administratrix of his estate.

Al Marks, also published at that time, before that a publication called LOMTO Bulletin. LUMTO was the League of Mutual Taxi Owners and there was another small group that Al Marks came from and headed at one time when he became the head of ITOC. Another one of the defendants is Salvatore Baron who was the executive director of UTOG and at one time the chairman of the board of ITOC.

Another defendant is Al Zeff, Alfred Zeff, who was one of the employees of Mr. Wysinger. When he first -- excuse me. Let me strike the word "first." When he was publishing the Taxi Weekly. And Al Zeff was an employee of Taxi Weekly before the plaintiff Mr. Peterman came into the employ of Mr. Wysinger. In fact, Al Zeff will take the stand and testify and tell you that Abe Wysinger taught him the publishing business, taught him everything that he knew about the taxi industry, about publishing a newspaper, about subscriptions, about what is and has been the very life essence for A. Zeff, and he was a trusted and a loyal

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employee of Abe Wysinger, to the point that when Mr. Peterman purchased a portion of the stock of the corporation, and when Mr. Peterman was attempting to force Abe Wysinger out of his newspaper that he had founded, Peterman came to Al Zeff and said, "Stick with me against Abe Wysinger."

And Mr. Zeff will testify to this. Mr. Zeff said in return, "No, thank you. I intend to be loyal to Abe Wysinger," and he was then threatened by Mr. Peterman who said, "You will be sorry. I have powerful friends."

This is some of the background, some of the sub rosa activity which Mr. Nessen referred to, which is going to be required to be testified to so that you can place the issues in this case in their proper context, because it is not as the plaintiff says it is, but there are two sides to this road, two sides to this coin.

And his Honor, Judge Griesa, will tell you at great lenth, I am sure, concerning the burden of proof that is upon the plaintiff in this case, and I don't intend to infringe upon his prerogatives in that area, but let me just mention a few items that we intend to contest most strenuously: the first was the statement by Mr. Wentzel that Al Zeff attempted to steal the subscriptions list of Taxi Weekly. We say that is untrue, that never was true, there was never a need for it, and Al Zeff being the man of character that he is never would have been a party to such a scheme. He never attempted to steal or did steal any subscription lists.

The second is the allegation made by the plaintiff that the independent owner-operators attempted to withhold news from Taxi Weekly. This has no basis in fact or fantasy because it will be conceded, I am sure, that Taxi Weekly was the voice of the fleets   It was the spokesman for the fleet owners, and we, who own and operate our own cabs, that ply the streets of the City of New York, had absolutely no desire, no interest, no need to have our position put forth by the fleet owners because our position was almost entirely diametrically opposed to that of the fleet owners. In fact, historically in the city you will see that there were two camps in the taxi industry: the first made up of owner-operators, and the larger group made of the fleet owners who had their own garages, who had many, many cabs, some numbering into the hundreds of cabs.

THE COURT: We don't need that.

MR. MC GRATH: And we on the other hand were restricted to owning our own cabs. In other words, each partner could own one Medallion. And this can be seen in the allegation by the plaintiff, and it must be judged, the allegation. Plaintiff, that we attempted to pressure advertisers. You must take into consideration the economic pressure that one or two men owning one Medallion could possibly have upon an advertiser. And these are some of the questions that you are going to have to consider when we oppose most strenuously the allegation of the plaintiffs.

And finally, without burdening you any further because our position, I believe, has been set forth very clearly by the comments of Mr. Nessen, and I subscribe to many of them because they are historically correct, in closing I am going to say to you that when all of the evidence has been taken, when the law has been explained to you by the Court in the person of Judge Griesa, I am then going to come to you and ask for a verdict in favor of UTOG, in favor of ITOC, in favor of the individuals that I named because I am going to ask you ladies and gentlemen of this jury to affirm the right of each and every owner-operator of a taxicab who works day and night in the City of New York to express his own views, as guaranteed by the First Amendment of the Constitution, to buy his own newspaper, to publish if he wishes through his trade organizations and trade associations his own bulletin or newscaster or trade paper, and not ever, ever be required to purchase paper to read a paper, to think the thoughts of those who are opposed to his very livelihood, and so on behalf of the men and women who operate privately owned cabs in this city, we'll ask your indulgence and ask your verdict after this trial. Thank you very much.

THE COURT: The plaintiff's case.

MR. WENTZEL: Your Honor, the plaintiff will call Mr. Peterman.

SEYMOUR LESTER PETERMAN,

called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Peterman, I have got you all the way across the room so that you can be sure that we can hear each other so I want you to speak right up so that I can hear you and defense counsel and all the members of the jury.

Mr. Peterman, would you tell the jury when you first became employed by Taxi Weekly and what positions you held with that company?

A I was first employed just around the end of 1956 to sell advertising space.

Within a couple of months I was asked to supervise the day-to-day operations of the corporation as business manager.

A few months after that I was asked to assume the title of publisher of the magazine, Taxicab Industry and a couple of months after that an associate publisher of the newspaper, Taxi Weekly.

In 1960, the beginning of 1960, I had the titles of editor and publisher of the paper, and, oh, in about 1965 or so, my titles on the magazine was changed to editor and publisher from just publisher.

Q Would you briefly describe what your educational background has been?

THE COURT: I am sorry. In 1965 what was the change?

THE WITNESS: From just publisher to editor and publisher of the magazine.

THE COURT: Okay. All right, now go ahead with your education.

A I was educated in the public schools of New York City, in Brooklyn where I grew up, and I went to college at Princeton from which I have a Bachelor's degree.

THE COURT: What year?

THE WITNESS: 1948.

Q Would you very briefly describe your employment background before coming with Taxi Weekly?

A Yes. I worked in film and television production and sold some time on a radio station, and for a television station very briefly here in New York City.

I designed business forms and systems for several years, worked briefly on Wall Street in put and call option brokerage, and did some freelancing.

Q Would you describe the management of Taxi Weekly other than yours during the period while you were there?

A Well, when I first joined Taxi Weekly, there was one man who was managing the day-to-day operations by the name of Harry Gould, and he left shortly thereafter, and I was asked by the owner to take over his function.

The then owner of the corporation was Abe Wysinger, and he was not active at all in the operations of either of the publications, and at the time I joined he was mostly in Florida because he generally went to Florida from December through April of each year.

Q I'm sorry, would you continue? Were there other employees as well?

A There were basically three other positions in Taxi Weekly, Inc. The position of the man who did the writing, who had the title of associate editor of the newspaper. That was filled by Al Zeff.

The other two positions were one, a woman who was bookkeeper, receptionist, classified ad taker over the phone, and my secretary.

The other position was of circulation clerk.

Q Now, we have already had evidence introduced through the form of the stipulated facts which Judge Griesa read concerning the fact that you purchased some stock of Taxi Weekly in 1958.

Would you tell the jury the circumstances of that transaction?

A Yes. I had at that time been with Taxi Weekly about a year and a half, and Mr. Wysinger and I discussed several times what the basis of my employment would be. since in effect he had left the running of the business to me, he wasn't around very much, and in our conversations we would jointly develop the concept that it would be best for the future of the business if I were to become a 50/50 partner with him, and so we arranged that I would purchase 50 percent of the stock, of Taxi Weekly, for purely nominal amount of money.

MR. NESSEN: I will object to that characterization, your Honor. Couldn't we have the facts?

THE COURT: I will sustain it. Strike that. The only thing that -- I think we ought to try to bring out that this was in a conversation, do you get my point?

MR. WENTZEL: Let me shed some light on that.

Q To your knowledge, had Mr. Wysinger offered any similar such arrangement to any other employee in Taxi Weekly?

MR. MC GRATH: Objection.

A Yes.

THE COURT: Overruled.

A Yes, he had.

Q Would you describe the circumstances of that?

MR. DINKES: If your Honor please, I object. Can we be heard on the objection?

A The gentleman who preceded me --

THE COURT: The point is that there was an objection to the conclusion. Now if you want to probe it and get to the circumstances, he has got to be able to do it and this was how many years ago? A long time ago.

MR. DINKES: Mr. Wysinger is not a party to the lawsuit and he is trying to develop conversations between Mr. Wysinger and a third party who is also not a party. I can't see how that can be binding on anybody who is a party.

THE COURT: Mr. Peterman, was there a discussion between you and Mr. Wysinger as to how the amount was arrived at which you used to purchase 50 percent of the stock in 1958?

THE WITNESS: Yes.

THE COURT: Wouldn't that be the most direct way to bring this out? Why don't you go ahead with that?

THE WITNESS: Well, I don't remember the details --

THE COURT: In substance.

THE WITNESS: -- of what he said or what I said.

THE COURT: Do you remember the substance?

THE WITNESS: Well, he and I agreed that we would effect my purchase of the stock. I told him I didn't have much money, and if we went ahead with it I would have to go to the bank and borrow the money. And he and I arrived at a figure that was mutually satisfactory.

THE COURT: And that figure was $15,000?

THE WITNESS: $15,000, yes, sir.

THE COURT: Do you recall how it was decided the figure would be $15,000 versus some other figure?

THE WITNESS: No.

THE COURT: All right. Let's go on to something else then.

BY MR. WENTZEL:

Q Now, at that point what was the division of responsibilities and functions in running the newspaper between yourself and Mr. Wysinger?

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A Well, Mr. Wysinger took very little interest in the running of the newspaper or the magazine, for that matter. He wasn't in the office very much, and I was in charge of getting the business and overseeing what appeared in the paper in the form of editorials and the articles.

Q Where does Mr. Wysinger live?

A He had a home in Florida and he had a home in Montauk, and at that time I believe he also had a home in South Hamptom.

Q How often did he come into the office of Taxi Weekly?

A Well, he would generally come in each week outside of the December through April period when he was in his Florida home except at times also he took trips during the rest of the year and he wasn't in the office. But when he did come in the office, during the first couple of years that I was at Taxi Weekly he would leave early Thursday afternoon to catch an express train on the Long Island Railroad that went out to South Hampton or Montauk.

After the first couple of years he changed that to Wednesday afternoons.

Q When was the newspaper published each week?

A The paper was locked up on Thursday, on Thursday afternoon. The crucial last minute deadline work that you have in the newspaper business took place on Thursday mornings when decisions had to be made as to what went in the paper, if we were short of space, and we had too much to put in, decisions had to be made as to what to keep out, a lot of last minute news, unfortunately, always breaks right before your deadline, so that there often is a great sense of urgency because if you don't finish up with the editorial work and get everything and even the advertising cuts and getting the ads composed, if you don't get everything down to the printer at a certain time, since we didn't own the printing plant, we were just a customer, he couldn't hold the presses for us. You know, it would have to be printed sometime later and you would be charged twice the amount of money, so you had to meet these deadlines, and the deadline that we were always rushing to meet was on Thursday.

THE COURT: Let's take a short break now.

(The jury left the courtroom.)

(Recess)

THE COURT: All right, Mr. Wentzel.

DIRECT EXAMINATION CONTINUED

BY MR. WENTZEL:

Q Mr. Peterman, was Taxi Weekly circulated anywhere outside New York City?

A Yes, it was.

Q How many copies were circulated outside New York City?

THE COURT: On the geographic thing I am sure that we can stipulate to that. Let's get to the guts of the case.

MR. WENTZEL: All right, your Honor.

THE COURT: Fine. We'll work that out later.

MR. WENTZEL: Your Honor, I would like to mark as Plaintiff's Exhibit 1 for identification a bound volume of the issues of Taxi Weekly for the year 1964.

THE COURT: Okay.

xxx (Plaintiff's Exhibit 1 marked for identification.)

THE COURT: Are you offering it?

MR. WENTZEL: If the witness will so identify it, I will offer it.

MR. NESSEN: Your Honor, if that's the volume that has been shown to us we'll have no objection.

THE COURT: All right, it is received.

MR. NESSEN: It looks like it.

THE COURT: Yes. I am sure it is.

MR. WENTZEL: My purpose in offering this, your Honor, was that I wanted to have the jury have a chance to see what the paper looked like. Perhaps if they could just pass it among themselves as we continue.

(Plaintiff's Exhibit 1 for identification received in evidence.)

xx

Q Mr. Peterman, while the jury is passing the Exhibit 1 among themselves and looking at it, I would like to ask you a few questions generally about the newspaper.

First, what were the sources of news that were contained in the paper?

A Well, there were quite a few different sources of the news. A good bit of it was by the contact that we maintained with the people in the industry, both the leaders and the man on the street, by attending meetings, charitable affairs, just by going down to the corner to the hack stand and talking to some of the guys or going to where they congregate and have lunch, places like the Market Diner and the Belmore Cafeteria, places like that.

In addition, we would gather news from the general circulation media, the daily newspapers in New York, and other cities, too, when anything pertained to the taxicab industry or its interests, we would use what was published in these other media as a lead to develop stories on what was happening that we didn't have firsthand knowlege of.

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Frequently we would get firsthand knowledge by following up these leads.

We had clipping services, a number of them, a number of individuals rather than services who were located in various parts of the country who would clip newspapers either in their area or newspapers that they got from other areas, again sending us material that had to do with the taxicab field.

We exchanged publications with two publications in England, I think there was one in Canada for awhile, and we also got publications from various fleets throughout the country where they had internal publications where they would mimeograph a page or two each week or so and hand it out to their drivers, and also some of the fleets in New York City would have a house organ type of publication and they would send us copies of these publications.

Q Now, Judge Griesa generally described the type of advertising that Taxi Weekly carried. Could you identify for the jury who some of the printers were?

A Yes. The advertisers were national corporations like --

MR. NESSEN: I object to the characterization here, your Honor. I really don't think it helps us one bit.

Q Mr. Peterman, just identify them by name and I think we'll recognize them.

A Chrysler Corporation and its divisions, Dodge and Plymouth; Haley Crafters, who made two-way radios; Rockwell Manufacturing Company. They made taxi meters; a locally based importer of taxi meters who had the Argo meter which I believe was made in Europe which was called Efficient Instruments Corporation; local dealers who sold cars to be used as cabs: King Ford handled Fords, Future Motors handled Dodge. Those were two of our very largest advertisers. They had large ads practically every week.

There were several other Dodge dealers who were prominent advertisers. They were mostly in Brooklyn, the other ones.

Their names were Ebbetts Field Dodge and Haste Dodge and I think Bob Hertz Dodge.

In addition, we carried a completely different type of advertising, aside from the ads such as I described --

THE COURT: This is fine but I think we get the idea. We'll come back to those names I am sure later and I think the jury has enough of this picture. Can't we get to the events that we're really concerned about?

MR. WENTZEL: All right, your Honor. I just wanted to get a litle more of the background about the newspaper, your Honor.

At this time I will also skip over for the time being some of the details about the magazine.

THE COURT: Surely.

MR. WENTZEL: So that we can move into some of these other issues.

THE COURT: Right.

Q Mr. Peterman, I would like to direct your attention now to the month of April, 1964, and ask you whether you had a conversation with Benjamin Botwinick at that time.

A Yes, I did.

Q And would you explain to the jury who Mr. Botwinick was?

A Mr. Botwinick was one of the two principal leaders of the fleet organization --

MR. NESSEN: I object to characterizations.

THE COURT: Overruled.

A -- executive director of the Met Taxicab Board of Trade, president of the Taxicab Bureau, and he was frequently in the public press as well as in Taxi Weekly, the spokesman, along with an attorney by the name of Henry Freedlander for the taxicab fleet owners.

Q Did Taxi Weekly, as a newspaper, regard him as a fleet spokesman?

A Yes.

MR. NESSEN: I object to that. I just don't think that's relevant here at all.

THE COURT: Overruled.

MR. NESSEN: I don't understand that it is --

THE COURT: Overruled Let's go, Mr. Wentzel.

Q Where was this meeting held?

A In his office.

Q Who was present?

A Just he and myself.

Q Do you recall how the meeting was arranged?

A His office called me and said that he would like to see me.

Q Would you tell the jury what was said in the course of that meeting?

MR. NESSEN: Your Honor, can we have an objection that it is binding only on Mr. Botwinick at this time subject to connection, the usual stipulation here?

THE COURT: Well, I think I will just tell the jury this: aside from any technical rules of evidence, there is a common sense rule which backs the technical rule. If you hear testimony about conversations between, say, Mr. Peterman and Mr. Botwinick, now, obviously, Mr Botwinick is a defendant and you must consider that against, or for, whichever it is, but you must consider it with regard to Mr. Botwinick and Mr. Peterman because they were there.

Now, evidence also has to come in one step at a time. You can't get the whole picture at once. You have to sort of reserve judgment on whether that testimony can affect anybody else. How can it affect anybody else? It can only affect anybody else if that somebody else bands together in some way with Mr. Botwinick, is associated with Mr. Botwinick, and so it makes sense to have that testimony affect the other person. We're just at the start of the trial so I think you have to consider that in the light I'm talking about, the number of defendants, and evidence of these conversations will come in bit by bit, and keep in mind that you can only consider a conversation against somebody if it is logically and rationally connected with them in some way. That's really true of all evidence. So that is stated in the abstract and in general but I think if you try to bear that in mind it will mean something to you as the specifics of the case go forward.

MR. NESSEN: Your Honor, I wonder whether -- the witness has been looking at some yellow sheets while you were talking, and I would like to make absolutely sure that those sheets remain here and are marked.

THE COURT: Okay, you can get them marked for identification. All right, Mr.Wentzel, let's go.

Q Along that line, Mr. Peterman, did you make a memorandum of the conversation with Mr. Botwinick?

A Yes, I did.

Q When did you make the memorandum?

A I believe it was that day or possibly the day after.

Q Have you used that memorandum since to refresh your recollection concerning that conversation?

A Yes, sir.

Q Would you tell the jury what was said in the course of that conversation?

A Yes.

Q And incidentally, before you begin, if you wish that memorandum to refresh your recollection, please say so.

A Yes. It would be helpful.

MR. NESSEN: I think we ought to exhaust the witness' recollection first. I take the the memorandum is not one of these yellow papers he has been looking at.

MR. WENTZEL: I have the original of it here. I will take it either way, your Honor. He can exhaust his recollection and then look at it or he can look at it now.

THE COURT: What is the point of this?

MR. NESSEN: I would like to hear the witness' testimony.

THE COURT: All right, let's get going. Testify as to your best recollection and then if you want to go back over it in view of the extent that you can remember anything, you can do that. Let's have your recollection first, all right.

A Mr. Botwinick told me that he wanted Taxi Weekly to have slashing attacks on Morris Markin, the head of Checker, that Markin was out to ruin the taxicab industry, and that he wanted to see Taxi Weekly crusading, he said, as in the old days.

He was unhappy with the state of affairs in the taxicab industry, and --

THE COURT: You mean Botwinick said this?

THE WITNESS: Yes.

A He said he wanted to have unity in the cab industry and he defined unity to mean that all elements in the cab industry would follow the line that the fleet owners had on the fare increase.

He showed me a memorandum that was prepared by the press agent for Met Taxicab Board of Trade, George McIntyre, and was submitted to the attorney, Henry Freedlander.

MR. NESSEN: I will object to that. I thought we were having conversations.

THE COURT: I assume that you are saying now that these things were said to you.

THE WITNESS: Yes. He showed it to me and then we discussed the memorandum.

THE COURT: All right, Go ahead.

A The memorandum had to do with a meeting of the ITOC and discussed what the positions of the various owner-driver leaders in the ITOC was regarding an offer by Morris Markin to back the leaders of ITOC in a drive for a fare increase which would be different from the fare increase that the fleet owners wanted. It would be a larger one. And Morris Markin would finance the drive for this.

Well, the memorandum was written by somebody who was a member of that group. The facts in the memorandum were relayed to the writer of the memorandum --

MR. NESSEN: I object to this. We're having a conversation and we're going far afield.

THE COURT: Just take it easy. Just now limit yourself to the conversation between you and Mr. Botwinick and not any other description of things wrong or right with the memorandum, do you get me?

THE WITNESS: Yes.

THE COURT: Maybe you were but just make sure that you are telling us now the substance of the conversation, nothing more, nothing less, all right?

MR. MC GRATH: Your Honor, I respectfully move to strike what was previously said as to the contents of the memorandum.

THE COURT: Well, was that something that you are now stating or was it your own analysis or was this something said between you and Botwinick?

THE WITNESS: He showed me the memorandum and then we discussed it somewhat. He was telling me what the leaders of the ITOC were going to do about the Markin issue, and he was angry.

THE COURT: All right, go ahead. What was said about the memorandum? Let's go back over that.

THE WITNESS: He showed me the memorandum, and then he discussed it with me.

He volunteered the memorandum to me. He took it out and said, "Here, look at this," and so I looked at it.

He told me he was unhappy with what was taking place in the cab industry. He didn't want all these different people having different ideas about a fare increase, and he was unhappy about Taxi Weekly.

He said that he wanted Taxi Weekly not to publish the positions that these other people had. He wanted Taxi Weekly only to print material that was on the fleet owners' proposal.

In addition to that, he told me that Abe Wysinger, my co-owner of Taxi Weekly, and I were having problems with each other, which I was not aware of, but he brought this up and he told me this.

MR. NESSEN: I move to strike the "unaware of."

THE COURT: No, I am not going to strike the "unaware of."

THE WITNESS: He said "The grapevine has told me this," and he relayed it to me.

That's about all I can recall.

Q Do you recall what you said in the course of this conversation, Mr. Peterman?

A I do recall that I wasn't able to say very much because he was talking very rapidly and was very difficult for me to get a word in, but one thing I do recall saying was that I mentioned to him that if he wanted unity in the industry, and I agreed with him that unity was a good idea when a regulated industry is trying to get a fare increase, it might make sense for him to discuss his position with the owner-driver leaders and to come to some understanding, and also to discuss the objections that the then Mayor Wagner seemed to have to the fare increase and the then City Council Majority Leader David Ros had and to come to some kind of understanding so that everybody would be satisfied.

He replied to me that he wanted unity but he wanted it on his terms.

Q Anything else that you can recall about that discussion?

A That's about all.

Q Now, you mentioned the fare increase several times here. Would you tell the jury what the fare structure was at that time and what the proposals were in respect of the fare increase?

A At that time the average ride statistically came out to around 85 cents and on the meter the first fifth of a mile, I believe it was, was 25 cents. In other words, when you got in the cab and then the driver pulled the flag, 25 cents appeared on the meter.

THE COURT: Is that what is called the drop rate?

THE WITNESS: Yes.

A And for each additional fifth of a mile, I believe, it was a nickel. Plus there was a charge for waiting time also.

The increase that was being sought by the fleet owners was to raise the 25 cents initial drop to 35 cents. It was an increase of ten cents.

Q Mechanically, how was the increased obtained back in 1964?

A Well, it had to be passed as a law by the City Council, and as all city laws, I guess, and be signed by the mayor. Perhaps even go through the Board of Estimate. I'm not sure.

Q How long had it been since there was a fare increase?

A I believe it was over ten years.

Q Had any bill been placed before the City Council at that time?

A Yes.

Q Speaking now of the spring of 1964.

A Yes.

Q And was the bill as you described it raising the drop charge by ten cents?

A That's right.

Q What was the fleet owners' position with respect to the fare increase?

THE COURT: He's already said that.

MR. WENTZEL: All right.

THE COURT: The fleet sought an increase to 35 cents for the drop charge. We have had that.

Q What was the fleet owners' position with respect to how the additional ten cents would be used?

A Well, they developed a percentage which would give approximately half of the increase that the driver wouldn't automatically get because he works on a commission basis, so he would get -- I think it was roughly something like 41 or 42 percent of the dime as part of his commission.

Then I think it was figured that the payroll costs, the Social Security and some other things would eat up the rest of the first half cent. Something to that effect.

And the rest of it, though, the fleet owners were going to provide the drivers and I think initially their other employees, the inside help, with benefits that they said would eat up or use up the remaining half a dime or nickel.

Q These typical fringe benefits, hospitalization and so forth?

A Yes, welfare, I think hospitalization, medical plan, things like that.

Q And what was the position of the owner-driver with respect to the fare increase issue?

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A Well, they were --

MR. MC GRATH: I will object to that, your Honor. This man is not qualified at this point. There is no foundation laid that he was conversant with the position of the owner-drivers.

THE COURT: Running a newspaper.

MR. MC GRATH: Judge, my point is that there were many different positions.

THE COURT: I will allow it.

Q Just so there is no confusion on that issue, Mr. Peterman, as a man running this newspaper in the taxi industry, was the fare increase something that you were concerned with yourself?

THE COURT: We don't have to have that. I am going to allow him to testify about that.

A Yes.

THE COURT: What was the position or what were the positions? Describe whatever you knew about the position or positions of the owner group on the fare increase.

THE WITNESS: It was positions because there was more than one position and it seemed to change from time to time. Some of the owner-driver groups did favor more of an increase, but from time to time these positions did shift. Some of them went along with the fleet owners with only going for just the ten cent increase.

Q Can you identify which owner-driver group held which position at this time?

A I think a group called the Amalgamated.

THE COURT: Does that have any bearing on this? Amalgamated isn't a word we heard about.

MR. WENTZEL: Nobody is going to say it, your Honor, so okay?

THE COURT: All right.

Q What was Taxi Weekly's position with respect to the fare increase?

A Taxi Weekly's position editorially was in favor of the increase and there were many stories in Taxi Weekly about this issue because it was the primary issue.

MR. NESSEN: I move to strike the second part of that.

THE COURT: We waste more time with these objections.

MR. NESSEN: I know, your Honor, but --

THE COURT: I will deny it.

Describe the editorial position was the question. Now what is the next question?

Q Did Taxi Weekly support it editorially now, support the fleet owners' position on the fare increase?

A Yes, it did, in many editorials.

Q Did it restrict its reportage to the fleet owners' position?

A No, it didn't.

Q What else did it report?

A Well, it reported what the views of the other elements of the industry were, and the fact that there was some hesitation about passing the bill because it had been stalled and it wasn't moving in the City Council. That was reported, too.

Q Was the editorial policy of Taxi Weekly changed in any way during 1964?

A (No response)

Q In this period from the beginning of 1964 up until, say, the middle of July.

A No, not basically, no.

Q Were there any editorials in Taxi Weekly with which you disagreed with the fleet owners' position?

A No.

Q You mentioned, in connection with the conversation you had with Mr. Botwinick, that he had told you about a dispute with Mr. Wysinger. When did you first receive any formal notice of such a dispute?

A It was about five weeks later when I got a letter from an attorney whom I knew to be friendly to Mr. Wysinger, a friend of his, which said that unless Taxi Weekly, Inc. were dissolved, actually it would be taken to do so.

MR. WENTZEL: May I have this document marked as Plaintiff's Exhibit 2.

(Plaintiff's Exhibit 2 marked for identification.) xxx

Q Mr. Peterman, I show you Plaintiff's Exhibit 2 for identification and ask you if that's the letter that you received which you just testified about.

A Yes, it is.

THE COURT: What's the date?

MR. WENTZEL: It is a letter dated May 20, 1964.

THE COURT: Okay.

MR. WENTZEL: I offer it in evidence, your Honor.

THE COURT: Any objection?

(No Response)

THE COURT: All right, let's go ahead.

(Pause)

THE COURT: If there is no objection, Plaintiff's Exhibit 2 is received. What is the next question?

(Plaintiff's Exhibit 2 for identification received in evidence.) xxx

Q Mr. Peterman, Plaintiff's Exhibit 2 makes reference to the possibility of judicial proceedings for dissolution of the corporation. Did there come a time when such proceedings were actually brought?

A Yes.

Q By whom?

A By Mr. Wysinger.

Q When did that occur?

A I'm not sure of the exact date but it was sometime thereafter.

THE COURT: Well, that ought to be agreed to. Wasn't it June 15th? Subject to check we'll take it as June 15th, 1964, and you can look up the exact date. Does that sound about right?

THE WITNESS: Yes.

THE COURT: Was that an action to dissolve the corporation and split up the assets?

THE WITNESS: I believe so.

THE COURT: And that was in the New York State courts?

THE WITNESS: Yes.

THE COURT: Okay.

Q Did there come a time when Mr. Wysinger made an offer to purchase your half of the company?

A Yes, there did.

Q Do you recall when that offer was made?

A It was sometime in June. I believe possibly in early June.

Q What response did you make to the offer?

A I believe I asked whether he was offering to sell at the same price that he wanted to buy, and the response was negative.

Q What was the result of the final resolution of this dissolution proceeding?

A Well, we had a hearing before a referee, and --

THE COURT: He asked about the final result. It was never finally resolved.

MR. WENTZEL: Let me see if I can cut through it.

Q I gather that the corporation was not dissolved as a result of that proceeding.

A No, it wasn't.

THE COURT: There was an agreement, wasn't there?

THE WITNESS: That's right.

THE COURT: What was that?

Q Did you make some agreement to buy Mr. Wysinger's stock?

A Yes.

Q I will get to that a little later.

THE COURT: What is the next question.

Q Approximately how many of the ninety fleets were subscribers to Taxi Weekly?

A It was somewhere in the seventies, I would say. Seventy odd fleets.

Q And how were these subscriptions obtained by Taxi Weekly?

A (No Response)

Q Perhaps I can cut through that if there is no objection.

Was it done through Met or were they obtained individually?

MR. NESSEN: I think we would prefer that he ask a simple question rather than lead him.

THE COURT: What was the mechanics?

THE WITNESS: It was done both ways.

THE COURT: How?

THE WITNESS: Both ways.

THE COURT: I guess I missed the both ways.

Q Why don't you just describe it? Answer the first question.

A Some of the bulk subscriptions were obtained at meetings of Metropolitan to which I had been invited.

Others were obtained as a result of phone calls that I made to various fleet owners or conversations that I had individually with them at various times when I would see them, at public hearings down in city hall, or at charitable affairs in the taxicab industry, or at meetings of one kind or another, or in their garages.

Q Now, were the bulk subscriptions that you had with the fleet owners -- did they have any time limitation on them?

A No, they didn't.

Q What was the normal practice insofar as the length of time that they continued?

A Well, they generally just continued. They continued on until there was some change. From time to time there was some change but most of the time there wasn't.

Q Did you suffer cancellations from time to time?

A There were some, yes.

Q I would like to direct your attention to the date of July 14, 1964, and ask you whether you received some telephone calls relating to the fleet subscriptions on that date.

A Yes, I did.

Q Would you tell us what occurred on that day in that connection?

A In the afternoon I received three phone calls within five minutes cancelling each of the caller's bulk subscriptions to the newspaper.

Then there was another one some minutes after that, and then there was another one after that. All of them were within about half an hour.

MR. NESSEN: Your Honor, I don't want to interrupt the witness but can this line come in with the usual objections subject to connection so that we don't have to make it?

THE COURT: The instruction I gave to the jury applies to all these conversations. Okay. So we had a total of five within about half an hour. All right, go ahead.

Q Would you tell us who was it that identified themselves in the telephone conversations and what was said?

A The first call I got was from Mr. Heit, the late Mr. Heit. He called up and cancelled.

I accepted the cancellation and that was that.

And then a couple of minutes later Mr. Schaffran called up and cancelled.

A couple of minutes after that Mr. Marin called up and said he wanted to cancel.

And by around then I said, "Are you guys sitting around a table calling me?"

I don't recall what his answer was to that. I think he may have laughed or something, but --

Q Don't speculate if you don't know.

A I don't quite recall that.

Then a little while after that Mr. Marks called me up and cancelled.

THE COURT: What happened then?

THE WITNESS: And a little bit after that Mr. Jack Plotsky called up and he, too, cancelled the bulk subscriptions.

Q Did you receive any other cancellations on July 14th?

A There was another phone call from Leon Murstein that I don't have any record that I personally received, and he cancelled on the same day.

Q Did you receive any cancellation letters that were dated July 14th?

A Yes.

THE COURT: Can we have a name, Leon Murstein?

THE WITNESS: Yes, your Honor, Leon Murstein.

A There were several letters of cancellation from a fleet by the name of Cornell Maintenance. The letter was from Philip Rosenbloom.

There was another from a fleet called Columbia

Operating.

THE COURT: Okay. These letters were dated on or about July 14th?

THE WITNESS: Dated on July 14th.

THE COURT: Give me the names again, please.

THE WITNESS: Of the letters?

THE COURT: Yes.

THE WITNESS: From Cornell Maintenance, from Philip Rosenbloom.

THE COURT: The same Cornell Maintenance is somebody different from Rosenbloom?

THE WITNESS: Well, the letter was signed by him in behalf of Cornell Maintenance.

THE COURT: So let me get the name. Leonard Rosenbloom?

THE WITNESS: No, Philip Rosenbloom.

THE COURT: And the second one in what was the other letter?

THE WITNESS: From Isidore Suchman, or Ira Suchman. I'm not sure how he signed it but it is the same person.

THE COURT: Any other letters?

THE WITNESS: From Columbia Maintenance. I'm not sure. I will consult the schedule that I have here.

MR. NESSEN: Your Honor, if the witness is consulting a schedule I would like to make sure that --

THE COURT: Well, can't we get the general outlines of what happened? We'll just take another few minutes and then tonight you can work together and get a stipulation on the dates, the persons, on all the relevant information on these cancellations.

MR. WENTZEL: Yes, we have all these letters.

THE COURT: And go over that tonight and work out something on that. Let's get the general --

MR. WENTZEL: We have already prepared that information. I was just holding back and trying to finish up with this.

THE WITNESS: There were four letters of cancellation, but two of them confirmed oral cancellations.

THE COURT: All right.

Q Now, of the cancelees that you just mentioned, Heit, Schaffran, Marin, Milton Marks, Plotsky, Suchman and Rosenbloom, had you had any complaints, received any complaints about Taxi Weekly from any of those persons?

A No, I had not.

Q Prior to that time?

A No.

Q Had you had any communications with any of them

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in the months prior to that time?

A Well, I may have talked to them in passing, you know, at various affairs or in gathering news, but nothing relating to the cancelling of newspapers.

Q Had any of them given you additional subscriptions at any time prior to then?

A Yes.

Q Could you tell us about that?

A In March of that year Leon Murstein's fleet, Butler Maintenance, who got their papers, bought them in bulk but they were individually sent to the homes of the drivers as some of the bulk subscriptions were, they sent in a revised list of drivers, and they increased the number of drivers to get the newspaper by about a third, something under a hundred.

A couple of months later Jack Plotsky's fleet sent in a revised list of their drivers. This was in May.

MR. WENTZEL: May I have this document marked as Plaintiff's Exhibit 3.

(Plaintiff's Exhibit 3 marked for identification.)

Q Mr. Peterman, you mentioned a list that Mr. Plotsky had sent you. Let me show you Plaintiff's Exhibit 3 for identification and I ask you if that is such a list.

A Yes, it is.

MR. WENTZEL: I offer this in evidence.

MR. NESSEN: I wonder why this is necessary, your Honor, to check this list. We accept the fact that there was a list.

THE COURT: I will allow it.

MR. NESSEN: I can't check it but I don't think that we --

THE COURT: Is this a list that you received from Plotsky?

THE WITNESS: Yes, or from his office to my office.

THE COURT: Okay.

MR. NESSEN: Why can't we just stipulate that he increased the number by a certain amount? Do you really want this?

MR. WENTZEL: There is the proof of it.

MR. NESSEN: All right, I will check it.

THE COURT: I will receive it. Go ahead.

MR. WENTZEL: Your Honor, at this time, to carry on in a visible progression, I was planning to offer the cancellation letters and a number of facts as to the totals.

THE COURT: Where do we go after the cancellations? What is the next testimony on that?

MR. WENTZEL: Then I wanted to get into the purchase of stock of Mr. Wysinger which occurred later in 1964.

THE COURT: In September?

MR. WENTZEL: That's correct.

THE COURT: Let's cover that now and then we can adjourn, okay?

Q Mr. Peterman, did there come a time when you purchased the remaining 50 percent of the stock of Taxi Weekly, Inc., from Mr. Wysinger?

A Yes.

Q Would you describe the circumstances under which that occurred?

A Well, at the referee's hearing to dissolve the corporation, he had, for the first time, offered to sell to me and gave me an option of several weeks duration to purchase his ownership, and I exercised that option on September 14th.

The option was at a price of $50,000.

Q Now, at this time, or at that time you had already suffered a number of cancellations of your newspaper subscription, hadn't you?

A Yes, sir. I had. Almost half of my circulation revenue had been cancelled.

THE COURT: Wait a minute. At the time the option was given or at the time it was exercised?

THE WITNESS: At the time the option was given it was almost half, and I believe at the time it was exercised it was quite a bit more than half.

THE COURT: Okay. Go ahead, Mr. Wentzel.

Anything else on that subject?

MR. WENTZEL: Yes.

Q Did you consider the $50,000 at that time to represent anything approaching the value of the company as of three or four months before?

A No, I didn't.

MR. NESSEN: Objection.

MR. MC GRATH: Objection.

THE COURT: I think that the witness -- I will overrule the objection.

Q Your answer was no.

A No, I didn't.

Q Will you tell the jury why not?

A Yes.

MR. NESSEN: Can I have a continuing objection to this line?

THE COURT: Yes.

MR. MC GRATH: Likewise, if your Honor please.

THE COURT: Yes.

A A substantial portion of the net profit of Taxi Weekly had evaporated within a few months, well over $20,000 of the profits were gone.

There was every indication at the time that there might be more cancellations because they were continuing. And as it turned out, they were. There was every indication that I might run into financial problems in operating the company because of the falloff in subscription revenues.

As it turned out, I did run into these problems and had to cease publishing.

MR. NESSEN: I object to volunteering what turned out and I don't think that was the question, your Honor, with due deference.

THE COURT: I think Mr. Wentzel asked you what you believed the value was at the time. What time are we talking about?

MR. WENTZEL: As of September.

THE COURT: As of September, was it the same as it had been?

THE WITNESS: Well, the business was damaged. Certain things had happened. There was the possibility that the larger source of the revenue of Taxi Weekly which was advertising might be affected. As it turned out, it was.

MR. NESSEN: I object to "as it turned out."

THE COURT: You know, it turned out it was. Now we all know it so let's not waste time with this.

Now the real problem is who caused it and who was responsible.

Anything else on that subject?

Q While you and Mr. Wysinger were still shareholders, and, in fact, when you first became co-owners of the company, did you enter into an agreement with Mr. Wysinger at that time?

A Yes.

Q It was back in 1958?

A That's right. We had a purchase agreement.

MR. WENTZEL: Your Honor, I would like to --

THE COURT: I think we'll have to break now. The jury can retire and I will talk to the lawyers for just a moment. Ten o'clock promptly.

(The jury left the courtroom.)

MR. NESSEN: Your Honor, can I have a direction that the marking of all these things that are being looked at by the witness be accomplished right now?

THE COURT: Wait a minute.

MR. MC GRATH: What was your application?

MR. NESSEN: We're going to mark all these things.

Maybe we can make them a court exhibit, your Honor.

THE COURT: Now, I have a hearing in another matter now but I would like to at some point see the results of your work on this stipulation and maybe we can review that later today after this hearing or would it be more convenient to do it tomorrow morning. But there are two things that are going to help this case along, and it is going along very well now. But I think that we can get statistical facts stipulated, the cancellations of subscriptions, and I am sure there is material that can be stipulated about as far as advertising.

Secondly, one thing that I didn't ask you to do because I know you are all working hard over the weekend on other things, but this process of bringing out an exhibit for the first time during trial and having it examined and offered, Mr. Wentzel, could you plan what you are going to offer tomorrow and then submit it before the session to the lawyers and let's avoid that process so we can get the documents submitted in advance of each session and get here early enough to cover that and then work on the stipulation. Now what about the stipulation?

MR. NESSEN: Your Honor, I have marked what we're prepared to stipulate, and there is quite a bit of it, and I have given it to other counsel who have not

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really been consulted as much as they should, and --

THE COURT: Can I see it? Let's get an idea about it.

MR. WENTZEL: We don't have it, your Honor.

MR. NESSEN: I gave you one this morning.

MR. MC GRATH: You gave him my copy which I took back because I can't agree to some of the things you have in there.

MR. WENTZEL: Can someone give us one?

MR. NESSEN: Most of the stuff there is these conversations that are characterized and, of course, there is no point to it.

THE COURT: Beginning at 25 there must be a lot of objective facts about cancellations.

MR. NESSEN: Not the way they are phrased, your Honor.

THE COURT: I am not worried about phrasing.

MR. NESSEN: I am happy to work with my opponents on it.

THE COURT: Let's try to work on it overnight.

MR. NESSEN: If they use the word "discontinue" instead of "cancellation" and if they just list the names and places we will be happy to do it but when they characterize I just can't do it.

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THE COURT: Now another thing, we're going to have a problem about the testimony about these conversations occurring in 1966 and so forth, and I don't know the answer to all that. There was a lot of reference to that in your proposed stipulation, and that's a problem because I don't think anybody has briefed that adequately. There has been some briefing but but the way I see it is this: the time this comes up mostly is, of course, in criminal cases. Now in a criminal case, if -- you all know the basic rule and it is not even worth repeating, but the kind of thing that occurs to me that may be some analogy to our situation is this: suppose you have an ongoing conspiracy, and suppose during that conspiracy two conspirators get together, and they just reminisce, they say, "Well, how was it you got the heroin over last year?"

And the other guy says, "Well, I brought it over in a Jaguar, and I had the floorboards arranged in a certain way," and they are just talking, now, if that is nothing more than a narrative of what went on, I don't think it is admissible. I am speaking offhand but I don't think that's admissible.

On the other hand, if the giving of that narrative is to give one party the assurance that one of the fellows has the ability to go forward in a big new deal, then it is a statement in furtherance of the conspiracy. But it may or may not be depending on what you find about the purpose.

That's when you got an ongoing conspiracy.

Now, if you have got a situation where, like 1966,you have got a further question of whether the alleged conspiracy is over with.

Now, it may not be over with. It may be that this matter was still being talked about, and I don't have a clear picture of whether it was or was not over with. But there's another factor: the question of whether Mr. Peterman was going out to investigate the facts.

Now, I was pretty interested with that the other day, but I must say this: when a government undercover agent goes out on -- to make a heroin buy, he, of course, is not really after a heroin buy. He is investigating the facts. He is trying to make a case. So his intention, of course, is not conclusive, and if he talks to a heroin seller, and the heroin seller says, "Well, I can get plenty of heroin from X and Y, and if I line those people up to sell, will you buy," and so forth and so on. Now, from the standpoint of the guy on the other side from the agent, he is making statements in furtherance of a conspiracy and it doesn't reduce that or do away with that, the fact that he is talking to an agent unbeknowns to him.

Now, if people were talking to Mr. Peterman, and from their standpoint they were making statements in furtherance of the conspiracy, I think that that could be admissible. All of these things, however, are somewhat difficult, and I think that the only thing we can do is take it one step at a time. I wonder, though, if -- well, I just really sitting here, you know, just taking it in kind of a big bundle, I don't know the answer.

Now what I was about to say and maybe this is unfair to you is, I think that these conversations inherently have some elements of unreliability in this regard. I don't think it is really like the heroin situation. I think that there might be situations where people would want to be very diplomatic to Mr. Peterman, and that wouldn't be true in the heroin situation and so they might say to him, "Well, look, we always loved your paper. We would like to get back in at the first moment," to sort of get rid of him or flatter him or something else but what I am really leading up to is, I think, and these things are obviously crucial to you, it might be that the fairest thing to all concerned would be to have these witnesses in court and ask them, subject to all cross examination, about what their views were, and their attitudes were, and so forth, and what their conversations were. The tapes and all, exist for impeachment purposes, but these so-called admissions you are relying on pretty heavily, and I have some -- I think there are pros and cons on those, as far as both admissibility and weight, so I just ask you to think about it. I know we're going to get into this, I am sure, very soon tomorrow, and to have Mr. Peterman testify as to all these conversations, you may have a right to put them in, but it is a hard problem. What about having the witnesses here?

MR. WENTZEL: I have subpoenaed a number of them, your Honor, and I plan to have them here.

THE COURT: It would be a lot better to go with them and have them on the stand and to have their statements and testimony come through the witness stand.

MR. NESSEN: Since our last meeting I did dig up the memorandum of law that was submitted in openings to our pretrial discovery to get at these tapes and as you will see, it was clear that the argument was that this was a past event and all he was doing was investigating, and it wasn't in furtherance of the conspiracy, and I think in one of -- or affidavits the point which you made which I think is very key, this business of reliability. You get a man on the phone and if you hear these leading

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conversations where Mr. Peterman keeps talking to them, they are trying to be nice to him, they are trying to be exculpatory, too, to themselves, and for us to -- they are the anthesis to an act in furtherance on some of them and I just think in view of the past history of where they were excluded by counsel and by an affidavit that said they were past recordings, and it is not part of the res gestae, and we didn't get them in pretrial.

THE COURT: You intend to put these people on the stand?

MR. WENTZEL: A number of them, yes.

THE COURT: Could we do this: put them on the stand and defer the subject of whether through the tapes or through Mr. Peterman's testimony those conversations can be testified to and I think that will move the case along better and it would be fairer. If there is a residual need for these tapes or for Mr. Peterman's testimony about the conversations then we'll cover that but, otherwise, we're going to have a donnybrook tomorrow with me trying to take up the general question of whether all these companies -- we'll just spend an awful lot of time so I would plan this way: I would plan to, in the first instance, not have Mr. Peterman testify to the conversations, have the witnesses themselves, and be prepared, as far as your timing, to proceed that way. Have plenty of witnesses ready tomorrow so that you won't have to, you know, defer it the way I said, okay?

MR. WENTZEL: I gather you have no objection then if I take Mr. Peterman off and put some witnesses on and then bring him back again on some other subjects.

THE COURT: Of course not.

MR. NESSEN: Your Honor, I would still like to have these documents marked that the witness was using.

THE COURT: Surely. Now can we get together at about 9:30 and talk about the stipulation? I will meet you at 9:15 tomorrow.

MR. NESSEN: We're going to mark all these things that you were looking at.

THE WITNESS: I wasn't looking at all of them.

MR. NESSEN: And you looked at some of them. Let's have them all marked. He looked through the yellow papers over there. Four or five yellow papers.

THE WITNESS: I looked through them because --

MR. NESSEN: You looked at them. Let's have them.

(Adjourned to Tuesday, July 8, 1975, 9:15 a.m.)

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TAXI WEEKLY, INC.

against

66 Civ. 2827

METROPOLITAN TAXICAB BOARD
OF TRADE, INC.

July 8, 1975
9:15 a.m.

(Trial resumed)

(Discussion off the record)

(The jury entered the courtroom - 10:12 a.m.)

THE COURT: Mr. Peterman, I think you are still on the stand.

SEYMOUR LESTER PETERMAN, resumed.

THE COURT: Ladies and gentlemen, let me say that, and Mr. Peterman knows, the details about the subscription situation, either this noon or tonight, the lawyers will be able to work out a stipulation regarding exactly what occurred with respect to subscriptions: the names of the subscriber, the names of the subscribers, either the dates, or something to indicate the volume, either in terms, percentage terms or number of copies. Now we'll just have to wait for that but I don't think we'll have any more testimony on that subject because at least by tomorrow you will have a stipulated statement on that matter.

Okay.

MR. WENTZEL: Your Honor, before I begin, in response to your request, we did gather together a group of documents that we plan to use today. We didn't get to cover those this morning because we had other matters to discuss.

I can, I think, proceed as best I can asking Mr. Peterman generally about the facts and perhaps we can get some of these documents in a little later.

THE COURT: Very good.

MR. WENTZEL: I will try to proceed that way.

DIRECT EXAMINATION CONTINUED

BY MR. WENTZEL:

Q Mr. Peterman, did there come a time when, in the year 1964, when another newspaper appeared within the taxi industry?

A Yes.

Q What was that newspaper?

A The New York Hackman.

Q Did you receive copies of the New York Hackman?

A Yes, I did.

Q When did the first issue of the New York Hackman come out, as best you recall?

A The first issue was dated November 4th.

Q 1964?

A That's right.

Q Who was indicated as the editor or publisher of that magazine?

A The editor and publisher was Alfred Zeff.

Q Mr. Zeff had been employed by Taxi Weekly, is that correct?

A That's correct. Yes, sir.

Q Now, when did he leave Taxi Weekly's employ?

A September 18th.

Q 1964?

A 1964.

Q Now, directing your attention to --

THE COURT: When did he leave Taxi Weekly?

THE WITNESS: September 18th.

Q Who in the Taxi Weekly offices had access to the subscription lists of Taxi Weekly, the list of subscribers?

A Well, the circulation clerk, a Mrs. Krasner, was the one who worked in that particular room in our offices and knew where everything was, knew where the stencils were and knew how to run the addressograph equipment to make labels to put on each newspaper.

Q Would she have occasion from time to time to make copies of the stencils for any purpose?

A Well, each week for Taxi Weekly the whole thing was run off on this long what was called a dick strip, and each month a copy of the stencils of the magazine was run off. In each case these dick strips would be sent to the printing plants to be affixed as labels. They were just sliced off by machine and affixed and glued on to each copy of the publication as is done perhaps more automatedly by most publications.

THE COURT: Where were the dick strips run off?

THE WITNESS: In our office but they were used in the printing plants.

Q Where were they kept in your office?

A The dick strip itself?

Q Yes.

A It generally didn't remain there very long. It was generally run off right at the time it was going to be used so it would be as completely up to date as possible.

Q Did there come a time when you observed someone making a copy of the subscription list?

A Yes. On Thursday afternoon of that week, it was Thursday, September 17th, I observed a Mrs. Krasner taking drawers of stencils out of the sections of the cabinet that I knew contained the list for Taxi Weekly. I knew at the time that she was working on the Taxicab

Industry dick strip --

Q Which is the magazine?

A The magazine. The Taxi Weekly had been done on Wednesday afternoon to go down to the plant for the next issue on Thursday morning.

Mr. Zeff had already left for the printing plant Thursday morning with the dick strip for the next Monday's paper, which was being put to bed. So I observed her running off a dick strip of Taxi Weekly which was completely contrary to the way our practices were in our office.

Q Did you have a conversation with her at that time?

A Yes, I asked her --

Q Wait a minute. Just answer yes or no.

A Yes.

Q As a result of that conversation, what did you do?

A I fired her immediately.

Q Now, did you have a conversation with Mr. Zeff the next day?

A Yes.

Q What was said in that conversation?

A Well, he came in in the morning and he said he was quitting.

Q And he did so?

A Yes. And he did so, and he left.

Q While he was employed with Taxi Weekly, did Mr. Zeff have any responsibilities in obtaining advertising for Taxi Weekly?

A None whatsoever. His functions were purely in writing for the paper and editing material that came in from other sources, and passing the major stories on to me for editing.

Q Who was it within Taxi Weekly that had communications with advertisers?

A I was the sole person who handled advertising except the woman who was a combination bookkeeper, secretary, classified ad taker. If somebody called up with a classified ad, she would handle that.

Q Did you -- what was her name?

A Well, her name was Adell Grant, also known as Adell Cohen. She had been with the newspaper for many years but --

MR. DINKES: All he asked was what was the lady's name.

THE COURT: Could you tell me what time you are talking about?

Q How long was Adell Grant employed by Taxi Weekly?

A I think for twenty or thirty years.

Q Until when?

A Until she died early in 1964.

Q Did someone replace her?

A At times there was nobody there. Later on in the spring of the year --

THE COURT: When did she die?

THE WITNESS: Either January or February of 1964.

THE COURT: There was no formal replacement?

THE WITNESS: There was a formal replacement but at times that position was open, particularly --

THE COURT: Is this right: after her death, sometimes there was somebody there in her place and sometimes there was nobody there?

THE WITNESS: That's right. Particularly in the spring and summer, that position was not filled for long periods of time.

Q Getting back to Mr. Zeff, did he take over any of these responsibilities that had anything to do with advertising?

A No, he didn't.

Q Did there come a time when you observed communications from advertisers directed to Mr. Zeff?

A Yes.

Q When was that?

A In August of the year, I saw that ad copy and ad orders of other correspondence from longtime advertisers of Taxi Weekly were coming in addressed to --

MR. DINKES: If your Honor please, the question could have been answered in August of 1964 without any expanding, and I might say that counsel is leading the witness and suggesting answers to him and I object to it.

THE COURT: I tell you, you are not helping. Mr Wentzel is trying to go forward quickly. He is indicating topics with that in mind. I really don't think he's leading. And this witness -- there are some things that this witness is going to tell this jury his side of, and if he goes beyond a question and goes on with the story, it eliminates a question or two. So let's not have too much on nonresponsive answers.

Okay. Go ahead, Mr. Wentzel.

Q Complete your answer.

A Addressed to Alfred Zeff.

Q And that was shortly before he left the employ of Taxi Weekly?

MR. NESSEN: I will object to that, your Honor. We have the testimony when he left.

THE COURT: Well, then, what's the point of objecting?

MR. NESSEN: Because I think it is an unfair characterization, your Honor.

THE COURT: It may be a little argumentative. Let's really try to move on, please.

Go ahead, Mr. Wentzel, please.

Q Now, Mr. Peterman, have you had occasion to examine the letters of Hosynd Publications, Inc.?

A Yes.

Q That's a defendant in this action?

A Yes.

Q And as you examined the letter showing the initial subscribers of Hosynd --

A Yes.

Q These are the initial subscribers to the New York Hackman, is that correct?

A Yes.

Q Have you compared the list of subscribers with Taxi Weekly's subscribers, former subscribers?

A Yes.

Q With what result?

MR. DINKES: If your Honor please, that paper speaks for itself. I object to Mr. Peterman characterizing a paper that will probably be in evidence and will speak for itself. The jury can read it themselves. We don't need Mr. Peterman to tell us what it says.

THE COURT: Objection overruled.

MR. MC GRATH: Your Honor, may I be heard on that? I renew that objection and I stand by your Honor's ruling. Secondly, what do we mean by "former subscribers"? Do we have a time frame for that? Are we going back to subscribers before 1945?

THE COURT: I assume we're not going to 1945.

MR. MC GRATH: The question is very general, your Honor. I respectfully request that we set a time frame.

THE COURT: I think we can get it more specific as we go along.

Okay.

Q First of all, can you identify who the initial subscribers of the Hackman were?

A They were pretty much all members of Met Taxicab Board of Trade.

Q How have you been able to establish that?

A By checking against a list of Met Taxicab Board of Trade members

Q Which was produced in this action?

A That's right.

Q Did you examine the copies of the Hackman you received to determine what its editorial policy was?

A Yes.

Q What did you do to observe it?

MR. MC GRATH: Objection.

THE COURT: Overruled.

A I observed that it was primarily designed to fight the union.

THE COURT: To what?

THE WITNESS: Fight the union.

Q Did it contain issues concerning the union drive?

A Primarily.

MR. MC GRATH: Excuse me. Your Honor, again I reluctantly object.

THE COURT: Objection overruled. You have a standing objection on this line of questioning.

MR. MC GRATH: Can we just have what union it is, Judge?

THE COURT: You have the opportunity to cross examine.

Q Maybe I am trying to go too fast.

Could you just briefly describe what circumstances were concerning unionization of cab drivers in the industry in the fall of 1964?

A The fall of 1964 was the general start of the full scale drive by Harry VanArsdale, head of the New York Labor Council, to help the cab drivers organize the cab industry in New York.

There had been a union drive earlier than that but it had been, at least during '64, it had been primarily cab drivers without the backing of any major group. Going back a number of years there had been other major unions.

Q Was there any point in time when Mr. VanArsdale's group started holding rallies and that type of thing?

A It was about that time, yes.

Q In the fall of 1964?

A Yes.

Q What was the position of the Hackman regarding unionization of fleet cab drivers?

A It was very much opposed.

Q In its editorials?

A And its stories.

Q Did there come a time when the Hackman ceased publication?

A Yes.

Q When did that occur?

A It was in May of 1966.

Q Did there come a time when the unionization drive ended?

A Yes.

Q When did that occur?

A At the same time.

Q Following the final publication, the final issue of the New York Hackman, was any other newspaper started up by Mr. Zeff?

A Yes.

MR. MC GRATH: I object to the form of the question.

THE COURT: Overruled.

A Yes. The ITOC News.

Q Who was the publisher of that?

A The same publisher and editor, Alfred Zeff.

Q Did there come a time when advertisers of Taxi Weekly began to cut back or cancel their advertising?

A Yes.

Q When did that occur?

A In the fall of 1964.

Q Can you identify some of the principal advertisers who either cut back or cancelled their advertising?

MR. NESSEN: I will object to this. The best -- indeed, there is a schedule here that plaintiffs have submitted to us in answers to interrogatories that I would be happy to stipulate right now as accurate and let's put it in and they speak for themselves.

THE COURT: Will that help?

MR. WENTZEL: Yes. This is in the area that we were talking about and I would hope stipulating all of the facts. All I wanted Mr. Peterman to do was to just hit some of the highlights for the jury.

THE COURT: I think we can do that. Let Mr. Peterman describe it in general terms and then the details can be stipulated. That's fine. That's what we did on the subscription list.

Q Mr. Peterman, just so we can shorten this, let me show you a schedule which was taken from answers to interrogatories in this case listing advertisers and dates of cancellation and all I want you to do is just identify for the jury some of the first cancelees at this time.

A Future Motors Corporation, which was the largest of my advertisers; Chrysler Corporation; King Ford; Rockwell Manufacturing Company; Ebbetts Field Dodge, a dealer; Henry's Chrysler Plymouth Dealer --

THE COURT: Let's skip that. Why don't we have that marked for identification.

xxx (Plaintiff's Exhibit 4 marked for identification.)

THE COURT: Are you offering that?

MR. WENTZEL: Yes, I will. Let me just show it to Mr. Nessen.

(Pause)

MR. NESSEN: Your Honor, there is a stipulation or schedule here that shows when advertising came in and out of Taxi Weekly. It was attached to the interrogatories.

THE COURT: If there is any problem at all you can deal with that at a recess.

MR. NESSEN: I would like to reserve on this subject to --

THE COURT: Get a stipulation up.

MR. WENTZEL: I plan to also offer the one which Mr. Nessen is offering to which shows specific advertising --

THE COURT: Well, you work it out on the recess. Let's go on to something else.

BY MR. WENTZEL:

Q Mr. Peterman, do you know Leon Murstein?

A Yes, I do.

Q Did there come a time in June of 1966 when you had a conversation with Mr. Murstein?

A Yes, there was such a time.

Q Where did that conversation take place?

A In his office, in his garage at Lenox.

Q Lenox is the name of this operating company?

A Of one of them, yes.

Q Where is that located?

A That was located in upper Manhattan, I believe on Lenox Avenue.

Q Who was present at that conversation?

A Mr. Murstein and myself.

THE COURT: The date?

Q Do you have the exact date?

THE COURT: I didn't get it. What did you tell us about the approximate time?

THE WITNESS: I believe it was in June. I can give you the exact date if you want it. It was June of '66. 6/16/66.

MR. NESSEN: Your Honor, the witness was looking at a yellow piece of paper. Could we have that also marked?

THE COURT: Yes.

MR. NESSEN: Would you give that to the clerk, please.

THE COURT: All right.

xxx (Plaintiff's Exhibit 5 marked for identification.)

MR. NESSEN: I will look at all those later. I don't want to interrupt Mr.Wentzel's direct examination.

THE COURT: All right. Go ahead, Mr. Peterman.

Q Mr. Peterman, would you tell us what was discussed between yourself and Mr. Murstein on that occasion?

A Yes. The most vivid thing that I remember was that --

MR. NESSEN: Couldn't we just have what he said?

THE COURT: What was discussed. Don't characterize it because that's not the question.

A He said to me, "I am going to quit listening to you."

He said, "Everybody that's not with us is against us."

I said to him that things aren't black and white, and that's the trouble with this industry. Everybody in leadership looks at things that way. And I said there are all shades of gray in between and you have to take into account these different shades.

He told me that he had heard that Morris Markin controlled Taxi Weekly and was behind me.

I told him that this wasn't so, and that he certainly should have himself and he should have had the others confront me with this instead of spreading these rumors behind my back to hurt me with my advertisers.

He and I both talked about the mending of fences between us. He said that he would discuss this. He told me he was a member of the board of directors of Metropolitan and he said he would take this up with the board and discuss it with the members of the board.

He told me that he didn't like the New York Hackman.

I said to him that, "Well, you got the paper, didn't you?"

He said, "Well, that's another story."

We discussed a former conversation that we had had in 1964 during the time when the pressure was put on me --

MR. NESSEN: I will object to that.

THE COURT: Yes.

Q What was said, Mr. Peterman?

A In our discussion in 1966, in referring to the former conversation that took place in 1964 at the time when pressure was put on me to sell out.

MR. NESSEN: Objection. He repeated just what your Honor told him not to.

THE COURT: Don't address the witness. You can address me.

MR. NESSEN: That's what I said, your Honor.

THE COURT: If this was the substance of something said -- you get my point. If it is your own characterization now you can't testify to it. If you discussed it with Mr. Murstein in those terms, you can say it, do you get me?

THE WITNESS: Yes. I had to say it to put it into context.

THE COURT: You don't have to say anything to put it into context. You just limit it to what was said and the jury -- was anything said -- in other words, did you say anything to Mr. Murstein or did he say anything to you about pressure, or is this something you are now telling us about?

THE WITNESS: We were discussing the pressure.

THE COURT: You mentioned the word "pressure."

THE WITNESS: Yes, or words pretty similar to it.

THE COURT: All right, you understand me. Don't try to give us any background. Limit your testimony now to what was said at that time in words or substance, do you understand me?

THE WITNESS: Yes.

THE COURT: Okay. Now go ahead.

A We were discussing a prior conversation, and in the discussion of the prior conversation, which had taken place in the summer of 1964, Mr. Murstein, in 1966 told me in that discussion that he knew that something was being done to me in reference to what was happening in 1964 when the pressure was on me to sell out.

MR. MC GRATH: If your Honor please --

MR. NESSEN: Please, your Honor.

THE COURT: This was in the conversation in '66. He made that perfectly clear in the conversation after my instruction.

A In addition, if I may refer to my notes on it --

Q Before you refer to your notes, Mr. Peterman, let me just ask, did you record this conversation in 1966?

A Yes, I did.

Q And have you listened to that recording from time to time since then?

A Yes, sir.

Q You made notes on it?

A Yes.

Q And those are the notes that you have in front of you?

A Yes.

THE COURT: Has that been marked as an exhibit?

THE WITNESS: Yes, it was just marked.

THE COURT: All right. That's 5 for identification.

Q Please continue.

A He told me how much he disliked Markin after he discussed his having heard the rumors that Markin controlled Taxi Weekly.

He said that he follows the majority decisions of the Met Taxicab Board of Trade even if he disagrees with them, and that if he didn't do that, it would be up to him to quit the organization.

He said he would like to see fences mended between us but if the other fleet owners decided that there was any reason not to mend the fences, he would go along with them, particularly regarding the subject of the cancellation of the subscriptions.

He said that in 1964 there was no discussion of the cancellation of the subscriptions at official meetings of the Met Board of Trade, but he said that unofficially between the meetings, or before or after the meetings, that was another story.

He also said that there were regular meetings between fleet owner leaders and the leaders of the owner-driver associations and that Alfred Marks, the president of ITOC, had recently said to him, "Leon, why don't you come to these meetings."

And he said to me that he was too busy to attend them.

He mentioned the names Plotsky, Botwinick, and Lou Cohen, who was at times a partner of his in operating one of his fleets.

Q Don't tell us that. Just mention the name and what was said.

A He said this in connection with the pressure that had been put on me in 1964.

THE COURT: That's too vague. I will strike that. Strike the reference to Botwinick and so forth. Strike the last bit of testimony.

When I ask that something be stricken, the jury is to disregard it because it doesn't have any meaning.

Go ahead.

A That's about all that I can remember.

Q All right. Now, have you got that tape here in court?

A Yes.

Q Do you know Ira or Isidore Suchman?

A Isidore, I guess he pronounces it.

Q I am not certain what his first name is.

A We'll call him Ira.

Q Did you also have a conversation with Mr. Suchman in June of 1966?

A Yes, I did.

Q Where did that conversation take place?

A In his office, in his garage.

Q Where is that located?

A In midtown Manhattan.

Q Was anybody else present at that conversation?

A His brother Jesse.

Q Anyone else?

A Well, very briefly I believe a son of one of them was in there and very briefly, perhaps, a driver came in and out.

Q Was anybody else participating in the conversation?

A No.

Q Had Mr. Suchman been a subscriber to Taxi Weekly at any point prior to your conversation?

A Yes.

Q And had he cancelled at some point prior to the cancellation?

A Yes, on July 14, '64.

Q Would you tell us what was said in this conversation?

MR. MC GRATH: Excuse me. Your Honor, at this point may I object and may I have a continuing objection to any conversation the sum and substance or the actual words unless it is a clear showing that it is a statement made by a party which is adverse to its interest?

MR. NESSEN: I will make a continuing objection on the usual ground.

THE COURT: Overruled. I will overrule those objections.

MR. DINKES: If your Honor please, I would like to object and ask you to instruct the jury that any conversations that Mr. Peterman may have had with one of the defendants is only binding on that defendant and not on the other defendants.

THE COURT: The same instruction as I gave yesterday.

Okay, go ahead, Mr. Peterman.

Q Mr. Peterman, would you tell us what was said in that conversation?

A Yes. Mr. Suchman told me that he had heard that Mr. Markin controlled Taxi Weekly, he told me that he had heard reports that the task force that was examining taxi matters at that time of which I was a member that I had come out in favor of the Checker cab.

I asked him for some specific facts on it and he related them to me.

MR. MC GRATH: Excuse me. Your Honor, may I move to strike all of this which would be in 1966. The task force didn't even come into being until after 1965, after the election of Mayor Lindsey. It had absolutely nothing at all to do with the conspiracy and I ask that the jury be instructed and stricken from the record.

THE COURT: Let me see the lawyers up here for just a moment, please.

(At the side bar)

MR. WENTZEL: Your Honor, I have tape recordings of these conversations. I am trying to cut through this as quickly as I can.

THE COURT: All right. Now look, there was no objection basically to the first conversation. Now we're beginning to develop objections, and I think we better get some ground rules.

The position I would take is that any admissions by a defendant as to what he did, that I would admit.

Now, I am not -- now when we get into areas, and I don't think this was involved in the first conversation, and I would accept that last which I struck, but let's suppose that we get into an area where Suchman, or some other person talking begins to describe things that other defendants did, now that is on a little shakier ground, and again I am trying to use a criminal case analogy. If you have got a post conspiracy statement where one defendant talks about -- makes admissions of his own conduct, that's okay, but I think it is reversible error and I can't remember the case now but there is a very prominent case which holds that it is reversible error, that evidence of post conspiracy admissions where the admitter admits things by the co-defendant you not only can't admit it but you have to sever the trial.

So that, I think, if we could abide by that ground rule, we would simplify our situation and I wouldn't have to worry about whether this is a post conspiracy statement or a statement made in furtherance of the conspiracy, and it doesn't seem to me that these really are either, it doesn't seem to me that these statements are really in furtherance of the conspiracy.

MR. WENTZEL: This particular area we're getting into right now is one in which one of the defendants suggests that the way for Mr. Peterman to solve his problem is to go back to the people at Met and work it out with them. Now this is exactly the type of thing that we would claim was occurring through the years. You can work out your problems if you go down on your knees before Met, and here we're in 1966 suggesting exactly this.

THE COURT: I think that's probably okay. The thing that I think that that's a little -- the thing that I particularly want to exclude is this: Mr. Peterman testified about Mr. Suchman telling him that Mr. so and so did this or that.

MR. WENTZEL: He had heard that so and so did this or that. I agree.

THE COURT: That, I think, we want to keep out. There wasn't any objection basically on the first conversation but again we are now getting objections here and I think we better be alert.

So, Mr. Peterman, if you can observe this ground rule: when a defendant -- when you are describing a conversation with a defendant, you can tell everything that that defendant said about himself and whether he cancelled or why he cancelled, or what he would like to do now, or any suggestions to you to go do this. He is speaking pretty much on his own behalf. But if he testifies, well, my friend Joe also was cancelling, my friend Joe did this, my friend Joe did that, my friend Joe told me this, that, for reasons which may be not too clear, I can't admit that because that involves Joe, so you try, if you can -- I think you better tell the things that they say about themselves and on their own behalf but you can't tell what they say about Joe. Joe has to testify about Joe.

THE WITNESS: Your Honor, could I ask you this: can I testify about the fact that he discussed an issue with somebody else? He tells me that he discussed this issue with another party. He was there. He discussed it --

MR. DINKES: The jury will know anyway.

THE COURT: I don't think you can.

MR. WENTZEL: Wait a minute now. He is testifying to a discussion -- the conspiracy we are alleging here.

MR. PRATT: He is discussing an act.

MR. NESSEN: I don't think he can even testify as to what Mr. Suchman told him to go see Met in an effort to be kind to Mr. Peterman. That had nothing to do with the furtherance of this conspiracy.

THE COURT: Well, that's for the jury to determine the weight of.

MR. NESSEN: It is hardly to my mind anything to do with the furtherance of the conspiracy especially in view of the purpose and the way Mr. Peterman went down there to see Mr. Suchman. His ostensible purpose -

THE COURT: Let's not belabor that.

MR. NESSEN: And why he went down there.

THE COURT: I am concerned, though, about this. You see, I don't think anybody is really briefing me in any real detail on the fine points of the problem we are talking about so we are sitting here talking, trying to talk off the top of our heads.

MR. WENTZEL: We want to know ahead of time.

MR. NESSEN: You certainly know. You have a transcript of this.

THE COURT: Now what is the ground. You tell me because you are offering it. What is the ground on which you can offer admissions by this man that -- admissions by one defendant that affect and incriminate another defendant? Now, if it is a statement made in the course and in furtherance of the conspiracy, of course, you have got a right. We all know that.

I think that these 1966 conversations appear more and more to be just the opposite. They are rehashes of what went on before, and so I think the real problem is to what extent can a post conspiracy admission be admitted. Now that's your problem.

MR. WENTZEL: It certainly can be admitted against Mr. Suchman.

THE COURT: It can be admitted against Mr. Suchman, but when Mr. Suchman talks about Mr. Naren or somebody else, that's the problem I am talking about. What ground do you have for a post conspiracy admission by Mr. Suchman that affects Mr. Naren?

MR. WENTZEL: Well, we have an issue as to whether it is post conspiracy.

THE COURT: All right. I am asking you to assume for the moment it is a post conspiracy thing. There is a separate section on conspiracy.

MR. WENTZEL: Well --

MR. NESSEN: The comments to the section merely say that they are codifying the rule.

THE COURT: Can we go ahead and -- is there any way we can go ahead and pass this by for the moment?

MR. NESSEN: Judge, you might look at the comments.

THE COURT: Mr. Wentzel, what do you propose?

MR. WENTZEL: There was one comment in this conversation. Mr. Peterman tells me that he discussed cancellation with Mr. Freedlander who was an attorney for Metropolitan. Now Mr. Freedlander is not a party to this action so I am going to have Mr. Peterman omit that part but everything that he will relate now relates only to the --

THE COURT: Let's try to bypass that now because, you know, you look through these rules of evidence in a hurry and it is probably sitting right here but my eye always misses these things so let's come back to that later.

MR. DINKES: If your Honor please, I would like you to rule on the admissibility of Mr. Wentzel asking Mr. Peterman after each of these conversations whether or not he took a tape and whether or not he has that tape in court and whether or not the notes he has taken are from that tape. I think it is highly improper.

THE COURT: Well, it is awfully late to be objecting. You let all of this in. There wasn't a word of objection raised.

MR. DINKES: I am objecting now. I am doing it for any of the other people that he had conversations with, I object to Mr. Wentzel asking Mr. Peterman, "Did you tape record this and do you have a tape recording, and is this paper a codification of the tape?"

THE COURT: The jury knows that he taped these things and you didn't object to it coming in.

MR. DINKES: Your ruling is that if I didn't object to one I can't object to any of the others?

THE COURT: Sure. I think you better be more awake than that.

MR. DINKES: I except to that.

MR. NESSEN: I join in the ruling.

(Discussion off the record)

(In open court)

BY MR. WENTZEL:

Q Now, Mr. Peterman, would you tell us what was said in this conversation with Mr. Suchman in 1966?

A They told me that Mr. Suchman and his brother said that --

MR. DINKES: If your Honor please, one of these gentlemen is not a party to this lawsuit. I believe only Mr. Ira Suchman is a party and anything that the other Suchman would have said would be inadmissible. Can we address ourselves only to what Mr. Ira Suchman said?

THE COURT: Was it said in Mr. Ira Suchman's presence?

THE WITNESS: Yes.

THE COURT: Go ahead.

A That Morris Markin controlled Taxi Weekly.

THE COURT: Read the answer from the beginning.

(Record read)

THE COURT: All right, go ahead.

A And that at the task force hearing I had been pushing Checker cab.

I asked for details of this, and they told me that there had been five Checker cabs on display. I said

I was there. There were only two. They told me that Checker Cab was the only cab that had been invited down. I had personally written letters to ten different manufacturers to display their cabs and I told them this.

MR. MC GRATH: Your Honor, this was my previous objection. All of this is now in 1965. It is post conspiracy allegations. He is testifying to what happened at a task force meeting which couldn't have occurred until after the inauguration of Mayor Lindsey in 1966.

THE DEFENDANT: They were telling me as reasons for their animosity towards me then.

MR. NESSEN: That's not an issue in this case.

THE COURT: Look, can we limit it to what they told you about events in 1964? The task force thing was when?

THE WITNESS: '65, '66. Actually from '66 because the election was in '65. He didn't take office until '66.

THE COURT: I think I will strike the reference to the task force because I don't really know what to make of it and I'm not sure the jury would know what to make of it so let's limit it to things that he told you about events back in '64, all right? Was there anything along that line?

THE WITNESS: Well, he told me what to do in '66 regarding what happened in '64. Can I testify on that?

THE COURT: Yes, you can do that.

MR. NESSEN: May we have an objection to that?

THE COURT: You have your objection. All right, go ahead.

A He said he would like to see the breach healed --

THE COURT: "He" being -- this was Ira or Jesse?

THE WITNESS: One of the two of them. They were both talking to me and I was talking to them together and they didn't disagree.

THE COURT: What did they say?

THE WITNESS: They said in order to heal this breach and see about getting the cancelled subscriptions reinstated, after I had told them that I was -- this pressure was --

MR. DINKES: If your Honor please, I again object to that. I thought he was testifying to what Mr. Suchman said.

THE COURT: Yes.

Ladies and gentlemen, we are having trouble, and in order -- so this isn't any more mysterious to you than it needs to be, if a defendant made statements to Mr. Peterman in 1966, and if those statements relate to what that defendant did at the time of the relevant events, which were mainly in 1964, and if they had a connection with those relevant events, those are admissions by that defendant that can be considered as to him, and that's the reason we're letting those in.

If he talks about other things, or other people, then it, generally speaking, isn't admissible. But he can admit what he says about what he did or didn't do.

Now, so, if he says something about what he did or didn't do back in '64, you can consider that.

Now, obviously, if they are talking in 1966, they weren't just sitting there writing a little history. They may have talked about other periods of time and so forth.

I suppose that any objection, any suggestion about going to the board and mending fences, or something in '66, has a very limited relevance. I suppose that it is offered as circumstantial evidence to show the relationship and the role of Metropolitan. And so, with that in mind, I will receive it. We are not interested as such about fence mending efforts in 1966. That isn't the issue. The focus of this case is what went on and who was responsible for what went on back in 1964. And any direct or circumstantial evidence on that point can be considered by you. So with that in mind I will permit the witness to testify as to what suggestions were made, if any, at that time.

A They told me that they liked Taxi Weekly, they wanted to see the breach healed, they told me to see a gentleman by the name of High Saltpeter who was the executive director at that time of the Met Taxicab Board of Trade.

They also said that they would tell vendors of taxicabs not to advertise in Taxi Weekly, and they mentioned two vendors in particular, saying that they would tell them not to advertise.

THE COURT: They said they would tell them from here on out,or what?

THE WITNESS: Your Honor --

THE COURT: They said that, beginning in June, '66, tell people not to advertise in Taxi Weekly?

THE WITNESS: Yes. They said that, the context was this: they said that they bought their cabs from somebody else. If they were purchasers of cabs from these other vendors, they would tell them not to advertise in Taxi Weekly.

THE COURT: Beginning in June, '66?

THE WITNESS: They didn't say beginning when.

THE COURT: But they were talking about the present or the future?

THE WITNESS: I don't know.

THE COURT: Well, I will strike that evidence. That has no relation to the events. I will strike that. Okay. Was there anything else that bears on what happened in 1964? Let's try to limit it to that so we don't have any more confusion. Anything else?

THE WITNESS: Not that I can recall.

THE COURT: Is there any more?

MR. WENTZEL: Yes,your Honor.

MR. NESSEN: Your Honor, may we just have marked the sheet of paper that Mr. Peterman just looked at? Is this the same one as before?

THE WITNESS: No.

THE COURT: Just mark it for identification.

xxx (Plaintiff's Exhibit 6 marked for identification.)

THE COURT: All right, what's next?

BY MR. WENTZEL:

Q Mr. Peterman, directing your attention to July of 1966, did you have a conversation with Milton Marks?

A Yes, I did.

Q Had Mr. Marks previously cancelled his subscription to Taxi Weekly?

A Yes.

Q When did that occur?

A On July 14, 1964.

Q Where did the conversation with Mr. Marks take place?

A In the office which was across the street from the garage where his fleet was.

Q Who was present?

A Mr. Marks and I believe possibly his brother Arthur was in the room but I don't recall whether he was close enough to be in the conversation.

MR. WENTZEL: Excuse me for just a moment, your Honor.

THE COURT: All right.

(Pause)

(Discussion at the Bench off the record)

THE COURT: You go ahead, Mr. Wentzel.

MR. WENTZEL: Ladies and gentlemen, in the discussion we just had at the Bench that concerned another conversation Mr. Peterman had with the defendant and in this case that conversation was recorded and we have made a transcript of it which the defense counsel has had a chance to review and to hear the tape for its accuracy and to save a little time here I just wanted to read some passages from this transcript to you and Mr. Nessen will have an opportunity to read any other passages that are relevant that he wishes. We are going to adopt this procedure and save some time rather than have --

MR. NESSEN: Your Honor, I don't know exactly what passages are going to be read but when he starts we may just object.

THE COURT: All right. You can look on together just so Mr. Nessen knows what you are going to read.

MR. WENTZEL: This is a conversation between Mr. Peterman and the defendant Milton Marks on August 25, 1966, in Mr. Marks' office.

Quoting now Mr. Peterman.

"So far as Taxi Weekly goes, Milt, you can't go ahead on your own and get it without the" --

Mr. Marks interrupts and says, "No, I can't. You would have to put yours -- Les, I know how you feel but I don't want to at this time do anything that is not acceptable to them because as I am saying, I am stepping in now on maiden soil."

THE COURT: Just keep your voice up and a little slower, please.

MR. WENTZEL: Would you like me to repeat that?

THE COURT: Just that last bit.

MR. WENTZEL: Mr. Marks said, "No, I can't. You'd have to put yours -- Les, I know how you feel, but I don't "want to at this time do anything that is not acceptable to them because, as I'm saying, I'm stepping in now on maiden soil."

MR. NESSEN: Your Honor, in line with our continuing objection that we have in this area, I don't think that has anything to do with 1964.

THE COURT: I will overrule that objection.

MR. MC GRATH: Please note my continuing objection, your Honor.

THE COURT: Okay. What else?

MR. WENTZEL: Another passage. Mr. Peterman says, "By the way, why did they have to buy the Hackman? You said they had to buy it. Why? Did they say it was put out by the association?"

Mr. Marks replied, "Yes, they felt it was sponsored basically, I guess, by the association, I think. That's the way it was intended, that way, or what it was. They tried to give the news as they see it but I think if there is a leaning or feeling such as there is in any editorial column or what not, I'm sure that they were leaning, I think, toward the industry, don't you think so?"

MR. NESSEN: Your Honor, I would like to read from page seven.

THE COURT: All right, go ahead.

MR. NESSEN: Does the jury uunderstand that this was a transcript taken -- do we concede, a transcript of a tape and the tape was taken by Mr. Peterman and Milton Marks was not aware that it was being taped?

THE COURT: Yes, I think they understand that. Okay. Go ahead.

MR. NESSEN: Lester Peterman: "But, but there was this feeling."

And then there is an overlap I guess in the tape.

"I think there was a feeling that you were antagonistic in some way or another to the fleet operators and that you favored the individuals, and they before the union even started, they, they felt there was something there whereby maybe you are favoring labor."

THE COURT: I don't understand. Who was speaking?

MR. NESSEN: Milton Marks.

THE COURT: That wasn't clear. Start over again.

MR. NESSEN: First Lester Peterman says, "But, but there was this feeling."

Then Milton Marks, one of the defendants here says, and this is conversation, an overlap, "I think there was a feeling that you," meaning Lester Peterman, "Were antagonistic in some way or another to the fleet operators "and that you favored the individuals, and it, and then there is -- before the union even started they, they felt there was something there whereby maybe you were favoring labor against industry. Not that we went into a fight. We lost it ultimately, and whatever it was, even if your switch were true, where they felt that you were leaning maybe in your editorials, in your columns --"

Lester Peterman said, "I wasn't to the opposition, as they say. Like I'm a Republican and you are favoring the Democrats. The New York Times is favoring the Republicans. The Post is favoring the Democrats. There is simply a difference in thinking."

And then he says at the end -- "Well, never mind."

THE COURT: Anything else?

MR. NESSEN: That's all we have.

THE COURT: Okay. What's next?

MR. WENTZEL: Your Honor, I will have, after the luncheon recess, one other transcript.

THE COURT: All right. Do you have anything else on direct of Mr. Peterman?

MR. WENTZEL: Yes, I do, your Honor.

BY MR. WENTZEL:

Q Mr. Peterman, do you know an Arthur Turkisher?

A Yes, I do.

Q And would you identify who Mr. Turkisher is?

A In 1964 he was a fleet owner, a member of the executive committee of Met Taxicab Board of Trade, and chairman of the public relations committee of Met Taxicab Board of Trade.

THE COURT: In 1964?

THE WITNESS: '65, '66.

THE COURT: I mean, in 1964?

THE WITNESS: Yes.

THE COURT: Okay.

Q And Mr. Turkisher cancelled this subscription to Taxi Weekly?

A Yes.

Q When did that occur?

A During the first week. I'm not sure of the exact date right now.

Q Referring now to July of 1964?

A That's right.

Q Directing your attention to January, 1966, did you have a conversation with Mr. Turkisher?

A Yes, I did.

MR. NESSEN: Your Honor, we object. Mr. Turkisher is not a defendant here.

MR. WENTZEL: He was a member of the executive committee of the Met Taxicab Board of Trade.

MR. WENTZEL: That doesn't mean that he binds the Board of Trade.

THE COURT: Your testimony is that he was a member of the executive committee and what else?

THE WITNESS: Chairman of the public relations committee.

THE COURT: Is this one you are going to use a transcript or have testimony about?

MR. WENTZEL: We'll have testimony about it.

MR. NESSEN: Your Honor, may we approach the Bench on this one just briefly?

THE COURT: Okay.

MR. NESSEN: Because I think we can save time this way.

THE COURT: All right.

(Off the record discussion at the Bench)

(In open court)

BY MR. WENTZEL:

Q Mr. Peterman, earlier in your testimony you described for the jury some of the sources of the news while you were running Taxi Weekly. Did there come a time when any of the sources that you described yesterday within the industry ever withheld news from you, and if so, would you describe the circumstances?

MR. NESSEN: I certainly would like to object to the characterization and the leading of this witness.

THE COURT: Overruled.

A Yes, there did come a time starting, as I recall, in the fall of 1964. Some of the incidents that occurred that I recall were at one point Mayor Wagner had made a comment that indicated he was in favor of Harry VanArsdale's taxi union drive, and I sought to get the reaction of Mr. Benjamin Botwinick to that statement and was refused.

I sought to get the reaction of Mr. Alfred Marks who had sent a wire to, I believe, the mayor objecting to the comments, and Mr. Marks refused to give me a statement about that.

Later on there were matters concerning the union organizing drive and I sought to get statements from an attorney for Met.by the name of David Benetar and I was refused.

I sought to get statements concerning a dispute that the taxicab industry had --

THE COURT: Let me just get this. Wait a minute. What was the name of the lawyer that you mentioned?

THE WITNESS: David Benetar, B-E-N-E-T-A-R.

THE COURT: Who was he?

THE WITNESS: A labor attorney representing the Met Taxicab Board of Trade.

THE COURT: Spell it once more.

THE WITNESS: B-E-N-E-T-A-R. I believe that's right.

THE COURT: All right. Now, what was it you said after the matter about Benetar?

A There was a dispute at the time between a good part of the taxicab industry and the Human Rights Commissioner at the time, now J. Booth, and I sought to get a statement from Mr. Norbert Brutenberg who was representing a cab driver who had a controversy with Mr. Booth and --

MR. NESSEN: Your Honor, I object to the notion that an attorney has any obligation in a litigating matter to speak to a report. I think this is just improper.

THE WITNESS: His statement appeared --

THE COURT: That's a matter for argument.

Q Mr. Peterman --

THE COURT: You sought a statement of what lawyer?

THE WITNESS: Mr. Norbert Brutenberg. The statement I was seeking did appear in the New York Happening later.

THE COURT: All right, go ahead.

Q Any other occasions, Mr. Peterman?

A Another that I recall involved Mr. Leonard Schaffran. There was a union dispute at his garage, and I got the union's side of the story, and to be fair and objective I wanted his side of the story, and he absolutely refused to talk to me.

Q Now, over the course of the years while you were with Taxi Weekly, did you attend meetings of the Met Taxicab Board of Trade from time to time?

A Yes, I did.

Q And what were the occasions for your attending those meetings?

A I was invited by Mr. Botwinick, Mr. Freedlander or Mr. McIntyre.

Q Who was Mr. Freedlander?

A General counsel for the Met Board of Trade.

Q Did you ever obtain any news at those meetings?

A Yes, I did.

Q Who was present at those meetings?

A Well, practically all the fleet owners who were members of Met, and at times some other invited people.

Q Did there come a time when those invitations ceased?

A Yes.

Q When was that?

A Around the summer or spring of 1964.

Q Did you attend, prior to 1964, had you attended meetings of any other industry organization?

A Yes. I would attend from time to time, when I had the time, a couple of meetings of some of the owner-driver groups.

Q Did you ever attend any meetings of UTOG?

A Yes.

Q How did you come to attend meetings of UTOG?

A I had a standing invitation to come to their meetings.

Q Was that a standing that was ever withdrawn?

A It was withdrawn when I went to one meeting and they wouldn't let me in. I guess that's a withdrawal.

MR. MC GRATH: I object to this unless we can place the time.

Q Can you place that meeting in time?

A I believe it was 1965, possibly early 1966.

MR. MC GRATH: Your Honor, I will have to object and ask you to move to strike that. That's post conspiracy.

THE COURT: Motion denied.

MR. MC GRATH: Thank you, your Honor.

Can we have an instruction to the jury to disregard that?

THE COURT: Motion denied.

MR. MC GRATH: I'm sorry.

THE COURT: Anything else?

Q Mr. Peterman, did Taxi Weekly ever carry any advertising for drivers?

A It occasionally did, very occasionally.

Q Who placed those ads?

A Fleet operators.

Q Were those ads ever the subject of discussion at a Met meeting attended by you?

A Yes, several times.

Q Can you place those meetings in time?

A I believe they were in the early sixties but I can't specify any more than that.

Q Do you recall what happened at those meetings?

THE COURT: These were meetings of whom?

THE WITNESS: Met Taxicab Board of Trade to which I had been invited.

Q These were regular monthly meetings of the association?

A Yes, as far as I know.

THE COURT: All right, what happened?

THE WITNESS: They invited me to attend the meetings for the purpose of hearing the discussion that took place regarding these ads.

MR. NESSEN: Your Honor, I think we should have it a little bit more specific than that. If that was a conversation I would like to hear who said what.

THE COURT: Let's just come to the meetings. What was said at the meetings and be as precise as you can about who was speaking, please.

THE WITNESS: The leadership on the dais, which was Mr. Botwinick and Mr.Freedlander, got to that subject, took it up and led a discussion that they didn't want to see these ads appearing, and criticized Taxi Weekly and the particular fleet owner who had placed the ad, and generally a discussion ensued and a lot of fleet owners got up and voiced similar criticism.

Q Do you recall any reasons being given why they didn't want those ads?

A Yes.

Q What was said?

A They said that they don't want to compete with each other for each others drivers.

Q What was the result of those meetings as far as the advertising was concerned?

A It was pretty much eliminated.. As far as I can recall, after a period of time, I didn't have any of these display ads for drivers.

THE COURT: You said prior to this time there were ads very occasionally?

THE WITNESS: Yes.

THE COURT: Can you give us an idea of the volume of such ads?

What do you mean by "very occasionally"?

THE WITNESS: Maybe once or twice a year, and what would happen is that after the ads -- I would either go to these meetings or get some phone calls.

THE COURT: Okay. Now once or twice a year until what time?

THE WITNESS: I'm not sure of the time.

THE COURT: You are not sure but -- I'm just not clear at all. Are you telling us that there did come a time? Are you telling us that after such an ad, whether it would appear, there would be criticism at a meeting?

THE WITNESS: Yes, and also from phone calls that I would get from some fleet owners.

THE COURT: But then at some later point another fleet owner would put an ad in and then there would be that same kind of criticism?

THE WITNESS: Right. Eventually it reached the point where I didn't get any more of these ads.

THE COURT: Yes, but when was that eventually?

THE WITNESS: I really couldn't put a date on it. It was sometime in, maybe, '63, '64 -- somewhere in that area but I really couldn't put a date on it.

THE COURT: Now, when such an ad would be put in, what would be the revenue from such an ad?

THE WITNESS: It could range up to, depending upon the size of the ad, $75 or $100.

THE COURT: Okay. Anything else?

Q How much was the incremental cost to Taxi Weekly of printing an extra page or two pages in the paper?

A I'm afraid I don't have a figure for that because it wouldn't be economical to print a page or two.

Q An extra page or two.

A No. It would have to be four pages or else squeezing everything in a little tighter in the basic eight or twelve pages.

Q So if you printed an extra four pages, what would be the incremental cost?

A I'm afraid I don't have that figure.

Q Let's try it the other way.

You just said that the driver ads would run around 75 or a hundred dollars per ad. What size ad are you talking

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about?

A If it was 75 or a hundred dollars it would be in the neighborhood of around a quarter of a page or a fifth of a page.

Q Have you examined, gone back to old copies and examined some of these ads?

A Yes, I did sometime ago.

Q Do you have a recollection of the size of the --

MR. NESSEN: I object to that. Let's see the ads.

THE COURT: Sustained.

MR. NESSEN: If there are such things.

THE COURT: Let's pass on this subject. I will talk to counsel about this issue at lunch time.

Anything else?

MR. WENTZEL: Just one moment, your Honor.

Q Mr. Peterman, did Taxi Weekly, Inc. pay any taxes while you were with the paper?

A Well, we paid the city taxes and occupantcy taxes, and taxes like that.

Q Did you pay any federal income taxes?

A Not while I was a shareholder in Taxi Weekly.

Q Are you familiar with the concept of a small business corporation?

A Yes.

Q And did Taxi Weekly elect to become a small business corporation under the federal tax laws?

A Yes, we did.

Q What effect did that have on your personal income taxes?

A I was obligated to pay, and I did pay, in my personal income taxes, my share of any profit that was made by Taxi Weekly, Inc., whether or not it was taken out of the corporation.

Q Did it make any difference how it was labeled?

A No.

MR. NESSEN: I will object to that, your Honor.

Q In other words, this included the salary you took out each week, the division of profits at the end of the year, and any money you left in?

A That's right.

MR. WENTZEL: Your Honor, may I approach the Bench?

THE COURT: Yes

(Discussion at the Bench)

THE COURT: What is your point?

MR. WENTZEL: Just on the question of finishing up with Mr. Peterman. There is a question of the running of the magazine. It was extricably bound to the newspaper. If you want, I will put in evidence on that and if you think that's something we can work out.

MR. NESSEN: No, I think that is something you should put your evidence in.

MR. WENTZEL: The other subject generally is on financial statements which is something that we can pass until --

MR. NESSEN: Just put them in evidence.

THE COURT: What is the evidence about the inextricable business?

MR. WENTZEL: That is the magazine, by itself, couldn't survive because it wasn't a big enough operation. So when the newspaper went down the drain the magazine went down.

THE COURT: The financial statements you can put in evidence as statements but can you wind up in about five or ten minutes and then start cross?

MR. WENTZEL: Yes.

THE COURT: Now on the cause for action for the withholding of ads for taxi drivers, I really think that that ought to be out of the case. The evidence is very vague on that at best both as [illegible] as liability and damages, and it isn't anything that you emphasized in your briefs and we have got a situation here where there is a statement that at some point not very well specified up until a point which is not very well specified, maybe '63, maybe '64, you had a couple of ads a year maximum revenues, 75 to a hundred dollars per ad, gross revenues, and after such an ad there would be a complaint and then for a time, in spite of the complaint, there would be another ad and then another ad and finally it was cut off.

MR. WENTZEL: There should have been many more because there was a chronic shortage of drivers throughout this time.

THE COURT: Well, realistically what can you do to support that? How many more would there be?

MR. WENTZEL: That's very difficult to tell.

THE COURT: I am not so convinced that the target area is involved here because you have the direct complaints about using the paper could be within the target area but I am just thinking about it.

MR. WENTZEL: That's what he just testified to.

THE COURT: I am agreeing with you that there is the possibility of a target area, and I am just saying as I heard the evidence, I just hardly think it is worth anything at this point in this, because I know that you don't have to prove damages down to, you know, the last dollar.

MR. WENTZEL: I can't tell how much business was lost.

THE COURT: I think it is a terribly vague claim and even on liability the effect of these complaints is very difficult to measure so I am going to -- I don't expect you to withdraw it but I am going to dismiss this. Is this the extent of your evidence on that point?

MR. WENTZEL: We have got some ads that did appear. We have testimony from a number of the defendants that there was a chronic shortage of drivers at that time.

THE COURT: Would you be able to put in anything which would?

MR. WENTZEL: Also that they did advertise in other media outside of the industry.

THE COURT: Are you going -- what are you going to be able to say about the quantum of the injury or damages?

MR. WENTZEL: It is difficult, I agree.

THE COURT: Can you say anything more than what you have said?

MR. WENTZEL: Not much.

THE COURT: Anything?

MR. WENTZEL: I quite agree.

THE COURT: I am going to dismiss the fourth cause of action. I think we'll just be distracted by those.

MR. NESSEN: I want to note on the issue that I think there are many, to make it perfectly clear, I think that your Honor is right for a multitude of reasons. There is no monopolization of purpose and either Section 1 or Section 2, put in another way, the target or the people who can claim will have the economic injury are not people who are innocently hurt, and I think that's clear. There is a target area but if you analyze it in terms of Section 1 and Section 2, and the absence because there certainly is not a per se violation of any proof that was going to be offered here of the unreasonableness of the restraint, you have to go through a twenty year history and I haven't heard any offer of proof on that and for all those reasons including damages, your Honor, I think you are right.

THE COURT: I think my basic point is that I think that the proof as given and as suggested by counsel here would indicate that the basic elements necessary to establish liability and damages, and I'm talking about both, are so ephemeral and vague as to not indicate that there is anything to be submitted to the jury, so I really am -- I think that the handwriting is on the wall. All right, let's finish up with Mr. Peterman.

(In open court)

THE COURT: I think you asked about the relationship between the two publications.

MR. WENTZEL: Yes, and I would like to start off by offering in evidence a bound volume of the magazines so that the jury might take a look at it just to see what it looked like.

MR. NESSEN: What year was that?

MR. WENTZEL: 1964.

THE COURT: I will receive it. Is this a bound volume of the magazine?

THE WITNESS: Yes.

THE COURT: All right, let's have it marked for identification.

MR. NESSEN: Your Honor, could we put in '63 and '62 of the same magazine at this time?

MR. WENTZEL: We have them here, Mr. Nessen.

xxx (Plaintiff's Exhibit 7 marked for identification.)

MR. WENTZEL: And is it received in evidence, your Honor?

THE COURT: Yes.

(Plaintiff's Exhibit 7 for identification re-

xxx ceived in evidence.)

MR. WENTZEL: Your Honor, may I show this to the jury?

THE COURT: Yes. They can just glance at it while you are going ahead with your examination.

Q Now, Mr. Peterman, would you describe to the jury what staff you used and offices and equipment, and so forth, to produce the magazine each month, and also describe whether in any way that same staff personnel, offices and equipment was also used in the production of the weekly magazine?

A Yes. There were basically four people involved in the production of both publications.

THE COURT: The same four people?

THE WITNESS: That's right.

A Each performed the same function on both publications.

THE COURT: All right, what's next?

Q Did you use the same offices?

A Yes. The same addressograph equipment, the same phones, services, a good portion of the same editorial material would appear in both publications. New York City newsworthy enough to have national significance would be run in a national magazine. National material that was newsworthy enough to a New York audience would be run in a New York magazine. Contact with the advertisers was by myself and it had to do often with both publications together because many of the national advertisers that appeared in Taxi Weekly also appeared in Taxicab Industry Auto Rental News, and a few of the advertisers who were located in New York City who appeared in Taxi Weekly also wanted to reach the national audience and used Taxi Industry Auto Rental News.

Q Can you make any division of the amount of time which the four people spent on the newspaper as opposed to the magazine each month?

A It would be extremely difficult to do that. Usually the work was somewhat intermingled except at deadline time when there came a deadline for one publication, you naturally worked very feverisly to finish up that particular issue of that publication and didn't work on the sister publication that didn't have the immediate deadline at the same time.

Throughout the years 1964 and 1965 and 1966, did the revenues of the magazine remain relatively stable?

A Yes, they did.

Q What about the revenues of the newspaper?

A Could the reporter read the prior question to me.

Well, as far as the newspaper went, the revenues dropped considerably starting with the fiscal year 1965 which ended in March of '65.

Q Did the corporation show a loss at any point in time?

THE COURT: This is all going to be in the statements. Let's defer this.

Q Now, both publications went when?

A In September of 1966.

Q Did you give any thought at that time to continuing with the magazine?

A I did give some thought to it but I realized in looking at the figures that the income from the magazine would by far exceed the expense of putting out just the magazine because I couldn't eliminate any personnel. I still needed somebody to do the basic writing and some of the editing. I, myself, had to work over all and secure the ads, and supervise the organization. We still needed a bookkeeper and a receptionist, somebody to do all the paper work, answer the phones, and we still needed circulation. We still needed the same offices and the revenues would be much less than the overhead.

Q I think you started to answer by saying that the income far exceeded the expense.

A I am sorry if I reversed it. The expenses were

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far greater because the expenses would have been not much less than the expenses I had for both publications except I would no longer have the expense of printing Taxi Weekly.

MR. WENTZEL: Your Honor, subject to the --

THE COURT: Subject to our discussion --

MR. WENTZEL: -- the discussions we have had, I am through with Mr. Peterman at this time.

THE COURT: All right. Cross examination.

MR. NESSEN: Your Honor, were we going to take that hour and a half today to do what we talked about?

THE COURT: We're going to do that at one. You start your cross examination.

While we are waiting, let me say that one of the things that we did discuss at the Bench here was the following:

I have dismissed or removed from the case the claims about refusal to advertise for taxi drivers, and I think that as you realize the main emphasis on the case is the other point, and so that is, I have removed from the case the claim about the refusal sometime prior to '64 although not particularly specified as to time, about any refusals or actions against fleet owners for advertising for taxi drivers, so that is out of the case and will not hereafter be referred to.

MR. NESSEN: Your Honor, could we have marked the United States tax returns of Taxi Weekly, Inc., for the fiscal year ending March 31, 1960 --

THE COURT: These are federal returns?

MR. NESSEN: Yes. Let's take that first as our next exhibit. Could you give me the 1960 tax return number?

(Defendant's Exhibit D marked for identification.)

xxx

THE COURT: What is the number or the letter?

THE CLERK: D.

THE COURT: D is what year?

THE CLERK: The year ending March 31, 1960.

MR. NESSEN: We are missing one. Do you have '59?

We are missing the one tax return and I would like to put them in in order.

I gave him two. Can we have the fiscal year ending March 31, 1971, marked E and the fiscal year '62 F; for the fiscal year March 31, 1963, G; and for the fiscal year March 31, 1964, H; could we do that?

May they be received in evidence, your Honor?

THE COURT:. Any objection?

MR. WENTZEL: No objection to the returns, to their content. We have no objection on the way they are used by Mr. Nessen.

THE COURT: All of these will be received.

(Defendant's Exhibits D, E, F,G and H for identification received in evidence.) xxx

MR. NESSEN: I am not sure it is entirely clear to the jury, your Honor, that a fiscal year that a corporation sometimes they don't use the calendar year the way people do --

THE COURT: I read them that the fiscal year ended March 31st.

CROSS EXAMINATION

BY MR. NESSEN:

Q And that was true of Taxi Weekly here?

A Yes.

Q Mr. Peterman, I am going to show you Defendant's Exhibits D, E, F, G and H and ask you whether you have ever seen these before.

A I believe they are the returns of Taxi Weekly, Inc., yes.

Q You have no doubt of that, do you?

THE COURT: He has simply said it. Now if we are going to have every point covered three times we'll be sitting here until Labor Day.

MR. NESSEN: I am terribly sorry, I thought he said he believed they were.

THE COURT: That's what they say. They are in evidence.

Q You have seen them before?

A Yes.

Q Now, did you sign any of those tax returns before they were filed?

A I don't know.

Q Well, who signed the tax returns, sir?

A Either myself or Mr. Wysinger.

Q Who prepared these tax returns?

A They were prepared by the accountant.

Q And who was your accountant, sir?

A Louis Grayham.

Q Was he a certified public accountant?

A Yes, he was.

Q How would they be gotten out?

A I don't know how accountants get up tax returns.

Q Did you give him the books and records? Did he look at your books and records?

A Yes. He prepared reports and from the reports he did the returns.

Q And he did that for each of these years involved here?

A Yes.

Q Would you take, for example, Exhibit D, and would you tell the jury what the taxable income in 1959 was on D for the fiscal year ending March 31, 1960?

A I'm not very familiar with this form.

Q Look at the bottom of the page, paragraph 27.

MR. WENTZEL: Your Honor, the witness has already testified that this was a small business and there was no taxable income for the corporation.

THE COURT: Let me see it.

MR. NESSEN: Line 27 where it says "Taxable Income."

MR. WENTZEL: It shows it for whatever purpose. They just used the form.

THE COURT: This is a document in evidence. The jury is entitled to receive and Mr. Nessen is entitled to point out any figure on it, but if we could do it a little more efficiently, you know what the figures are, we can all read. The taxable income item 27, $652.97.

MR. NESSEN: That's correct.

THE COURT: Well, it is here. Any anything you want to -- you can get these. You can stand up here and read them to the jury. You don't have to ask the witness what the document says.

Q Mr. Peterman, just a moment ago you said you weren't familiar with these tax returns.

A I didn't prepare them. I don't know where to find a particular figure on these returns. I have no idea.

Q Have you looked at these tax returns in preparation for this case?

A I did look at these returns several years ago. Not within several years.

Q But you did look at them?

A Several years ago, yes.

Q Now, turning to page three of that tax return, do you see line 1 that says the taxable income, $652.97? Do you see that down on Schedule K?

THE COURT: Stand up here and help him out. Stand right here and point it out.

A You mean where it says "Undistributed Taxable Income"?

Q Right. Would you repeat that?

A Computation of corporation's undistributed tax returns.

Q $652.97, right?

A Yes.

Q Now you see the schedule there that says compensation to you and Mr. Wysinger? Do you see that?

A Yes.

Q It says 20,700 to Mr. Wysinger as compensation and $19,740 to you, is that correct?

A That's right.

Q Did you ever read the bottom of this tax return on the first page, Mr. Peterman?

A No, sir.

Q Where it says, "I declare under penalties of perjury that I prepared this return"? Do you see that?

A I have seen that statement in the past, yes, sir.

Q And, now, would you look at Exhibit E, Mr. Peterman? Will you look at the bottom of the page where it says "Taxable Income," line 27, do you see the first page, $10,058.91?

A Yes.

Q And if you will, would you turn to page two and let me help you. Schedule E.

A Yes, I have it in front of me.

Q You have it in front of you?

A Yes.

Q Abe Wysinger, $22,830, and what does it say on your name?

A It says the same amount, I believe.

THE COURT: I just can't understand this procedure.

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All you have to do is to stand there and read figures from these documents. Whatever you want to read to the jury you may read.

Q Mr. Peterman, if you look at Joseph Peterman, you see Joseph Peterman on that return on page 2?

A Yes.

Q And it says that he got $1200?

A That's right.

Q And what was his title and what did he do for Taxi Weekly?

A Assistant Secretary was his title. He was inactive.

Q He was totally inactive, wasn't he?

A Yes.

Q And Joseph Peterman was your father?

A That's right.

Q And he got $1200 from this corporation?

A As assistant secretary, yes, sir.

Q He did nothing as assistant secretary, is that right?

A His activity with Taxi Weekly, Inc., was inactive.

Q Now, in 1961, sir, on line 28, I'm sorry, 1968, for the fiscal year March 31, 1962, the taxable income of

Taxi Weekly is shown as $304.24. Do you see that, Mr. Peterman?

A I do.

Q And on the second page it says Abraham Wysinger, amount of compensation, $27,800; Seymour L. Peterman, $27,800; and Joseph Peterman, $1200, and the total compensation of your offices was $56,800, is that correct?

A That's correct except for my name. It is Peterman not Peterson.

Q Did I say Peterson? I'm sorry. It is a pipe I smoke.

Now, turning to 1963, the taxable income on page 1, this is Exhibit G, I guess, shows $169.95, doesn't it, Mr. Peterman?

A Yes.

Q And you may or may not have signed this return, either you or Mr. Wysinger, is that correct?

A I can't tell on this return although on some others I see his signature. This one doesn't have a signature.

Q This one you can't tell?

A No.

Q Turning to the second page, Abraham Wysinger got 22,800 in compensation that year, didn't he, and you got

19,800 and you father got 1200, is that correct?

A That's right.

Q Turning now finally to Exhibit H, if you will, the fiscal year ending March 31, 1964, at the bottom of the page, item 28 says $6,169.91 as the income, the net income, taxable income to this corporation if it were taxed, isn't that correct?

THE COURT: If it says it, it says it. Read it.

MR. NESSEN: I just read it, your Honor.

Q Now, Abraham Wysinger on page 2 got $25,360 that year in compensation; and Seymour Peterman got $24,360, and Joseph Peterman got $1200. Do you see that on the return, Mr. Peterman?

A I didn't quite follow the very first figure.

THE COURT: Well, it is on there.

Q Well, please accept it. I am reading it.

THE COURT: Right. Okay.

Do you have any questions?

MR. NESSEN: Yes, sir.

THE COURT: Okay, let's go to the questions.

Q Now, Mr. Peterman, it was your understanding that these returns were going to be filed with the United States government, isn't that correct?

A Yes.

Q And you had employment records. Do you know whether you kept employment records at Taxi Weekly?

A I didn't personally but the corporation did.

Q Mr. Peterman, I'm going to show you some employees' records that were maintained by Taxi Weekly that have been supplied to me by your counsel, and there are one, two, three, four, five sheets.

MR. NESSEN: I would like them marked if I may, as our next exhibit. That is for the quarters of 1962 would be I.

xxx (Defendant's Exhibit I marked for identification.)

MR. NESSEN: That is for the quarters of 1963 would be J.

xxx (Defendant's Exhibit J marked for identification.)

MR. NESSEN: And for 1964, that is K.

xxx (Defendant's Exhibit K marked for identification.)

MR. NESSEN: I would like to have them received, your Honor, if I may.

THE COURT: Any objection?

MR. WENTZEL: May I see them?

No objection, your Honor.

xxx (Defendant's Exhibits I, J and K for identification received in evidence.)

Q Mr. Peterman, did you ever look at these employee records of Taxi Weekly?

A I did from time to time. I don't know whether I have looked at these specific ones.

Q But you know they were kept in the regular course of business, don't you?

A Yes, they were kept.

Q And did you understand that for all the compensation that you got from Taxi Weekly, that there was withholding, and various deductions taken as you do on employees?

A Yes. That's my understanding.

Q Was your understanding that was for all the compensation you got?

A If that is the way it is done. I know it was taken out of $150 salary that I got each week. I don't know what the procedure is.

Q Do you know that the other deductions were taken for the other compensation?

A I assume so. The accountant handled it.

Q Well, here, take a look at the employee records and see if that refreshes your recollection that you were aware at the time that deductions were being taken in the regular course of business from all the compensation that was gotten.

A Yes. Well, I see deductions here for one or two items so I would assume so.

MR. NESSEN: Do you have the financial statements from Taxi Weekly from fiscal '59 on?

MR. PRATT: Yes. That's fiscal 1960. I don't think I have '59.

MR. NESSEN: Could I have these financial statements marked and received in evidence, your Honor.

xxx (Defendant's Exhibit L marked for identification.)

xxx (Defendant's Exhibit M marked for identification.)

xxx (Defendant's Exhibit N marked for identification.)

xxx (Defendant's Exhibit O marked for identification.)

xxx (Defendant's Exhibit P, Q and R marked for identification.)

MR. NESSEN: I would like to have them received.

THE COURT: Any objection?

MR. WENTZEL: No. In fact, these are some of the statements that I intended to put in evidence myself.

xxx (Defendant's Exhibits L through R for identification received in evidence.)

Q Mr. Peterman, take Exhibit L, which is a financial report for the fiscal year ending March 31, 1960. Was that something that was shown to you by Mr. Grayham on or about the time it came out in 1960?

A Yes.

THE COURT: You saw these reports, didn't you?

THE WITNESS: Yes. This is July 7th.

Q And it would be true of all these reports, as his Honor suggested?

A Yes.

Q Did you study them?

A I certainly looked at them.

Q Did you suggest that there were any mistakes in these reports?

A The figures, as far as I could tell, seemed to be correct but I didn't redo the accountant's work. I assumed he had the correct figures there.

Q He is a certified public accountant and a man you respected, isn't that true?

A Yes, he is a certified public accountant.

Q Is he a man you respected, whose ability you respected?

A As an accountant --

THE COURT: I assume if you didn't think he was a good accountant you wouldn't have hired him. Let's go on.

Q Did you ever suggest that the net income shown on any of these financial reports was inaccurate?

A No, sir.

Q To the accountant.

A By net income, which figure do you mean?

THE COURT: Mr. Peterman, do you recall ever suggesting a change in the figures from those shown in those reports?

THE WITNESS: Well, if he means the net income as the bottom figure there, I never even regarded that as a meaningful figure. I never examined that figure.

THE COURT: That isn't the question and it is a very simple one and we're really bogging down here. Did you ever suggest to the accountant that that figure be changed?

THE WITNESS: I cannot recall ever making such a suggestion.

Q And did you ever suggest to the accountant that any figure on your federal income tax returns be changed either, did you?

A I don't recall. I believe at one time an amended return was filed and I don't recall just why it was. Some error was found by somebody.

Q But other than that amended return, you have never suggested any correction, have you?

A I can't honestly say yes or no to that.

Q Mr. Peterman, the process, if you will, when financial reports came in, they came in and the accountant showed them to you and Mr. Wysinger, is that correct, and you kept copies of them?

A That's not quite correct.

Q Tell me what happened.

A Well, he would send them to the office. He wouldn't come in and show them to us. He would send them to the office, and I would look at mine and I would usually leave Mr. Wysinger's on his desk if he wasn't there, as he often wasn't.

Q I didn't ask whether he was often there or not. We'll come back to that. It is just the process, you would lay it on his desk if he was there or hold it for him?

A Yes, which is what I would actually do. I would hold it in my files and give it to him when he came in.

Q Now, Mr. Peterman, I want you to tell the jury exactly what you did at Taxi Weekly in terms of your functions in the spring of 1964, if you don't mind. It is a little repetitive but I don't think we got the full picture of what you personally did to make up an issue. Am I right that you were the person who was mostly in charge, indeed, were in charge of getting advertising except for the classified ads?

A Yes

Q Is that correct?

A Yes. Securing the advertising. Sometimes the details of what we call transfer, seeing that the ad actually appeared in the publication, that the woman who was the bookkeeper, but in the spring of '64, no, she was no longer there.

THE COURT: You were asked about what you did. You obtained the business, right?

THE WITNESS: That's right.

Q And you supervised the actual entry of the ad into the newspaper, is that what you are telling us? I'm not sure.

A Well, if that job was filled, the woman who was there generally did it.

Q But if she wasn't there, you did it?

A Or somebody new, I had to handle that also.

Q Did you do anything else with respect to advertising?

A Well, I frequently, for the advertisers that didn't have agencies, even for some of those who did have agencies, I got the basic information that the advertiser wanted to appear in his ad and I composed the ads.

Q You helped compose ads, is that correct?

A That's right.

Q By discussing it with the people who had put in the ads?

A I frequently, in addition to composing the content, I worked on the form of the ad, the layout, the size of the type, what should be emphasized, what shouldn't be.

Q So it is layout, too, that you did?

A Yes.

Q What else in advertising?

A Well, I did what would be called missionary work where it wouldn't result in an immediate ad but you are looking toward the future to try to get ads for later on.

Q You sort of traveled and had entertainment as we lawyers sometimes call it, of prospective customers?

A Not that as much as getting the message across to them that this was the medium to use, either one of our publications if they wanted to reach our particular audience and also try to convince them that they wanted to reach our particular audience as opposed to some other audience in some other automotive field.

Q That was part of a selling job though, isn't it?

A Yes.

Q But missionary in the sense that it --

THE COURT: He described it. We don't have to have everything five times. I think we get the point.

MR. NESSEN: Thank you, your Honor.

Q Was there anything else that you did in advertising?

A Well, sometimes for some of the advertisers I had to contact them to get them to pay their bills.

Q Collections?

A Yes.

Q And --

A And some of the agencies, too.

Q Fine. Is there anything else?

A Not that I can recall right now. There were many details, believe me, and I may have left some things out.

Q All right, we'll forgive you for that.

Now, in the editorial function, could you tell us what you did there?

A I read the most important copy that would appear in both publications.

Q Would you do any editing?

A I read it for the purpose of editing, yes, sir, but sometimes I didn't do any editing and sometimes I did.

Q And what else did you do as an editorial function?

A Well, I sometimes covered stories. I sometimes went out with a camera and took pictures.

Q So that's sort of a repertorial function, isn't it?

A I would then decide which of the pictures I had taken would run in the paper.

Q But you went out and you gathered news, is that right?

A To some extent.

Q And took pictures?

A To some extent.

Q And you wrote stories, too, didn't you?

A To some extent, yes.

Q And is there any other function that you served in the editorial or the repertorial departments of this company?

A Well, I maintained contact with people who were our sources of news. That's a sort of goodwill emissary.

A Well, to find out what --

THE COURT: Why do we have to have it characterized. He said he maintains contact and who cares whether it is a goodwill or some other label? Can't we make a little time here?

MR. NESSEN: Yes, I am, your Honor, if you will just bear with me a little. I think your Honor understands why I am doing this.

THE COURT: I don't.

MR. NESSEN: Well, I shall explain it in a minute.

Q What administrative functions did you have with the Taxi Weekly?

A Well, I guess the administrative functions anybody would have in running a small business corporation.

Q Such as? Tell us.

A Hiring people when necessary, firing people if it is necessary. Both these I did in conjunction with Mr. Wysinger when he was around.

Q And what else?

A Well, I was concerned with the profitability of the business so I would look at the general expenses and the profit before officers' salaries was the figure that I would look at each month and I would examine this to see how I could improve the business.

Q You looked at the profit before officers' salaries each month?

A That was the important thing.

Q Did you have a profit statement each month in this newspaper?

A Yes.

Q You did?

A Yes.

Q What was it like?

A (No response)

Q What did it look like?

A Similar to -- the same kind of cover that the annual statement had.

Q You had a monthly statement?

A Yes.

MR. NESSEN: I would like the plaintiff to produce all the monthly statements that there have been or there were in 1964.

MR. WENTZEL: I personally handed copies of all those to Mr. Nessen back in November or December, your Honor.

MR. NESSEN: Could I have them, please?

MR. WENTZEL: I don't know if we have them here in court.

MR. PRATT: We'll bring them up at two o'clock.

MR. NESSEN: Would you, please?

MR. PRATT: We certainly will.

THE COURT: All right, go ahead.

Q Now, is it your testimony that these monthly statements showed a net profit before officers' salaries each month?

A Every month.

Q Yes?

A Yes, as far as I can recall, every month until the conspiracy.

Q Well, up to 1964, is that correct?

A No, through 1964 until the conspiracy.

Q Excuse me?

A Through 1964 until the conspiracy. Not up until 1964.

Q So the conspiracy began at the end of 1964, is that w[illegible] you are saying?

A No.

THE COURT: Are you talking about fiscal or calendar so we have no confusion?

THE WITNESS: I assumed he was talking calendar. Now maybe he wasn't.

MR. NESSEN: That's right, I was talking calendar.

THE COURT: All right, he is talking calendar.

How long did you show a profit?

THE WITNESS: Well, in the beginning of calendar '64, certainly. Then when the circulation dropped off radically, the profit diminished up to a point where profit became loss, and I'm not sure exactly where that month was, and I'm not sure that it didn't go back and forth a little bit for a few months. I'm not sure of the exact month where it turned.

Q Now, you said that the administrative chores -- the entire administrative chores you would share with Mr. Wysinger if Mr. Wysinger was around.

A Of if he were interested in doing any of it which he often was not.

Q But if he were around you would do it, if you were interested?

A I would bring things to his attention if he were there.

Q And that was true in 1964, wasn't it?

A No, sir.

Q We're talking about 1964, aren't we?

A Well, for the time that he remained in the business until the dissolution thing started and then it was difficult to bring things to his attention.

Q I thought you told us on direct examination that Mr. Wysinger did nothing in this business in 1964.

A As far as the day-to-date operations went --

Q Well, he did do something, didn't he?

A Very little.

Q Did he have contacts and friends in the taxi industry?

A No, sir.

Q Didn't he?

A He did, yes, but I don't know that he had them actively in '64.

Q You don't know one way or the other, this man who was in the taxi industry for over 31 years and still had friends in the taxi industry?

A He very rarely went to industry functions so I don't know. I don't know if I ever saw him in '64 at any industry function in contact with industry people.

Q So you have no idea that he had friends in the industry?

THE COURT: Okay, we'll adjourn now. I am going to try to have a trial of a short case during the lunch hour, and I think it will be over by about 2:15 but we may go over a few minutes after that but if you would all please report back at 2:15 I will try not to keep you waiting, I hope not at all.

(Recess)

l Weekly
vs.
T xicab
rd of Trade
ge Griesa
Civ. 2827

AFTERNOON SESSION

2:35 p.m.

(Trial resumed - jury present)

MR. NESSEN: Your Honor, we have premarked some exhibits that I would like to offer. Exhibits S, T, U and V for identification which are franchise tax, New York franchise tax for the fiscal years ending March 31, 1960 through March 31, 1964. Okay.

THE COURT: Do you have any more cross?

SEYMOUR LESTER PETERMAN, resumed.

CROSS EXAMINATION CONTINUED

BY MR. NESSEN:

THE COURT: Is there any objection to these?

MR. PRATT: No.

xxxx (Defendant's Exhibits S through V for identification received in evidence.)

Q Now, Mr. Peterman, we were talking, before the recess, about Mr. Wysinger and what he did in 1964. Do you recall that?

A Yes.

Q And I wanted to know whether in 1964 and 1963 Mr. Wysinger had done anything by way of soliciting advertising for the Taxi Weekly or for the Taxi Industry.

A No, he didn't solicit any advertising as far as

I know except on two occasions a year which had to do with special promotional ads and an anniversary and a Christmas issue of Taxi Weekly.

Q Didn't he do some special soliciting for Taxi Industry for the Christmas issues?

A No, he didn't.

Q Now, isn't it a fact, or is it a fact that he solicited fleet owners on an individual basis to try to get subscriptions?

A No.

Q That wasn't true in 1964?

A No.

Q Or 1963?

A No. Not to my knowledge.

Q 1962?

A Not to my knowledge.

Q Do you remember answering and verifying the interrogatories in this case?

A I believe I did, yes.

Q Do you recall -- I am referring to verified answers to supplemental interrogatories which I have marked, your Honor, premarked, as X for identification.

Q Do you remember actually executing and taking an oath that the answers were true?

THE COURT: Everybody executes and takes an oath. You can read it. I'm sure it will be received. You can tell the jury.

MR. NESSEN: I would like a little leeway.

THE COURT: I don't have time for leeway. Anything that you can read and state to the jury, state it and they don't have to have a colloquy between you and the witness on it and anything that you can get in the record and simply show to your expert on damages, you don't even need to display it now, don't. You can't have things done two or three times.

MR. NESSEN: Your Honor, this isn't on damages but let me read it if I may. I am terribly sorry.

Q Do you recall giving this answer, 1A, to the verified answers:

"With respect to the fleet owners, most of the orders, subscriptions and purchases of newspapers were solicited at meetings of the defendant Metropolitan Taxi Board of Trade and were subsequently obtained through requests made by individual fleet owners either at the aforementioned meetings or at meetings or over the telephone, or by letter sent to plaintiff's office. The balance of the orders, telephone or by letter solicited from fleet owners were solicited on an individual basis by plaintiff's principals, Abraham Wysinger and Less Peterman from time to time, and they were obtained through requests made by the individual fleet owners thus solicited over the phone, by letter or in person."

Now, Mr. Peterman, prior to April 1, 1964, do you recall one single incident where your newspaper had a disagreement with the Taxi Metroplitan over matters of policy in the taxi industry?

A Prior to April 1st when?

Q 1964, sir.

A I don't think our position was completely the same on the unionization issue.

Q Did you have a disagreement with Met about it?

A I had from time to time some disagreement with Mr. McIntyre who represented Met.

Q You did?

A Yes.

Q Do you remember testifying in depositions here and being asked the same question whether you had any disagreements prior to April, 1964, with Met? Do you remember that?

THE COURT: You can just read it.

Q Mr. McIntyre, you mentioned Mr. McIntyre, and he is a public relations man, as we all know for Met, is that correct?

A Yes.

Q He was?

A Yes.

MR. NESSEN: Do you have, Mr. Pratt, or Mr. Wentzel, do you have the black notebook of the bulk accounts receivable here in the courtroom?

MR. PRATT: Yes.

MR. NESSEN: I have marked Exhibit Y, and I offer it, certain pages of this bulk accounts receivable notebook, and I wonder whether you would --

THE COURT: Any objection?

MR. NESSEN: I will show it to counsel.

THE COURT: All right. Any objection?

MR. WENTZEL: I have no objection, your Honor.

THE COURT: All right. Received.

(Defendant's Exhibit Y for identification received in evidence.) xxx

Q Mr. Peterman, I show you this Defendant's Exhibit Y that has just been admitted. Does that refresh your recollection that for several of the years, and certainly up to 1964 and going back to 1960, that copies of the issues that were received by Metropolitan were kept on the accounts of George McIntyre, public relations man?

THE COURT: I don't understand that. Did he testify he didn't remember? What is this about the building?

MR. NESSEN: I thought I would short-circuit it, your Honor.

THE COURT: Well, what is this about? This shows who was billed for subscriptions?

THE WITNESS: In some cases it says George McIntyre and in other cases it says Met Board of Trade and I am trying to reconcile it.

THE COURT: I just don't understand what we're talking about. Do these relate to subscriptions sent to Met?

MR. NESSEN: Yes.

Q Do they?

A Well, some of the pages say McIntyre and some say Metropolitan.

Q There are years where it just says McIntyre, is that right?.

A That's right, of the pages you showed me here.

Q Well, you don't have any doubt -- I am not withholding anything from you. You can examine the book yourself if you like.

THE COURT: It is in evidence. Let's go.

Q Would you concede, Mr. Peterman, that the public relations man for Metropolitan paid for the subscriptions that Metroplitan itself took, or, rather, it was kept on his account for at least some of this period?

A These records indicate it, yes, sir.

Q All right.

Now, you said that you were invited by Mr. Botwinick and then Mr. Freedlander sometimes to meetings of Metroplitan, do you recall that testimony?

A Yes, I do.

Q Were you invited there as a reporter for news?

A I am not completely sure of what their motivation was.

Q Well, do you recall that you testified sometime back in February, 1967, and you were asked the following question and you gave the following answer:

"Q Were you invited as being a reporter for news?

"A I don't think I was invited as a reporter for news."

Do you recall giving that answer?

A If it is down there. I don't recall that, no. If it is down there I probably gave that answer.

Q And you were there because they were going to help you solicit for subscriptions, you were there also because they wanted perhaps your advice, isn't that so?

A Not necessarily.

Q Sometimes?

A Some of the times that could have been the reason.

Q And you were asked questions sometimes about your advice about matters, isn't that correct?

A I would think I was sometimes but I can't recall that it was very often.

Q Was there a reporter for any other newspaper that you remember at any of these meetings?

A I wasn't aware of any other reporter for any other newspaper.

Q While you were there, and up to the spring of 1964, do you recall at any time anybody at a Metropolitan meeting, soliciting business for any other newspaper?

A No, I don't.

THE COURT: Let me understand this.

BY THE COURT:

Q At these meetings of Metropolitan, about how many people would be in attendance?

A Fifty, seventy-five, perhaps. If it was a membership meeting, that is.

Q Well, were there monthly membership meetings?

A That was my understanding. I didn't go every month.

Q About how often would you go?

A It was my understanding that there were monthly meetings.

Q About how often would you go?

A It was irregular. If you want an average, I would say perhaps it was several times a year. But there was no regular schedule that we observed.

Q Among other things that happened at these meetings -- I guess it has been testified that you obtained subscriptions, right?

A Yes, sir.

Q Now, would people at Metroplitan help you do this in some way?

A At times.

Q Okay.

BY MR.NESSEN:

Q Well, they spoke up for you at the meeting, you didn't speak up, did you?

A At times.

Q You did speak up?

A At times I may have spoken up.

Q They gave you the opportunity to speak at these meetings?

A If I spoke, it was by their grace. It was their meeting.

Q Their meeting?

A Yes.

Q Did you regard these leaders of Met as your leaders?

A I don't know how I regarded them.

Q May I refresh your recollection? Page 27 of your deposition when you testified on February 2, 1967.

"Q Did you solicit these orders personally?

"A As I recall, most of the orders -- withdraw that.

"As I recall, most of the solicitation was done by our leaders of the group at the meetings."

Do you recall giving that answer?

A Yes, and I recall that there was a typographical error and it was corrected?

Q It was?

A Yes,sir.

Q When did you correct it, sir?

A When I signed the deposition.

THE COURT: Do we have the original?

MR. WENTZEL: I don't think I do.

MR. NESSEN: Did you ever give us a copy?

MR. PRATT: Yes. By all means. 2722.

Q Now, you changed "our" to "your" is that correct?

A Yes. There was a typographical error that was corrected.

Q So that it should have read, you are saying, as I recall, most of the orders, most of the solicitation was done by your leaders, your leaders of the group at the meetings, is that what you are saying.

A I believe that's what it reads.

Q Does that make grammar? You edit?

A I don't know whether it makes grammar.

Q It was done by your leaders of the group at the meetings? Is that what you actually said?

A That's how it reads.

Q That's how it reads after you correct it, isn't that correct?

THE COURT: Okay. Let's go.

Do you need some water?

MR. NESSEN: May, I, your Honor. I'm sorry. I didn't have lunch.

(Pause)

Q Now, Mr. Peterman, let's get off the subject of grammar here and get on to another thing.

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The subscriptions that you had or that the Taxi Weekly had to Taxi Weekly, these were pursuant to an understanding, wasn't it, that they could be cancelled at any time?

A It was an accepted, nonarticulated understanding.

Q You didn't have a written subscription piece that made it for a term, did you?

A No.

Q And you are not claiming that anybody breached a contract with you when they cancelled, are you?

A No, I'm not.

Q And isn't it a fact that a man -- you didn't want a man to read your newspaper if he didn't want to, did you?

A No.

Q No. Now, I am intrigued. There were these issues, and, ye gods, I don't mean to go back over those issues that were rife in those days, but we all know that in the spring there was an issue about unionization, isn't that correct?

A What spring?

Q The spring of 1964.

A I don't know whether it served us particularly in the spring but during that particular time it came up from time to time during a year or two.

Q Didn't you testify on direct examination -- I'm sorry to quarrel with you -- that in the spring of 1964 there was an issue of unionization that was of concern to the industry?

MR. WENTZEL: Your Honor, my recollection was that he testified it was in the fall of 1964.

THE COURT: I think he testified that in the fall VanArsdale started to support the move. Prior to that time it had been a little more disparate, the drivers being on their own. That's the exact testimony.

Q And wasn't there an issue in the spring of 1964 about the unionization at the same time by the Teamsters union?

A I don't recall that specific issue in the spring of '64.

Q Let me try to refresh your recollection if I may. Wasn't it a fact that you knew that in the spring of 1964 UTOG was negotiating with a local of the Teamsters union? Isn't that correct?

A That issue came up around that time but I'm not sure that was the spring of '64, and I thought originally you were talking about fleet drivers. I didn't know you were referring to owner-drivers when you originally asked that question.

Q Wasn't there a dispute between UTOG and ITOC in the spring of 1964 and a dispute between UTOG and the fleet owners about the fact that UTOG was negotiating with a union, with a local of Jimmy Hoffa's Teamsters union?

A I do know that there was a statement of some kind by some leaders in UTOG to work out some kind of deal with the Teamsters. What I don't know right now this minute is that I don't recall whether it was in the spring of '64.

Q Would you take a look at Defendant's Exhibit AB, Defendant's Exhibit AC for identification, minutes of an executive board meeting of June 29, 1964, starting with the business manager's report, and I quote.

THE COURT: Of what organization?

MR. NESSEN: This is UTOG, your Honor.

THE COURT: If it isn't in evidence, how can you read it?

MR. NESSEN: I'm sorry.

Q Would you look at the red line portion (handing)?

A Yes.

THE COURT: What is yes.

THE WITNESS: I just looked at it.

THE COURT: What is the question?

Q Does that refresh your recollection, sir, that in the spring of 1964, that the UTOG was negotiating, indeed had drafted a charter with the Teamsters union in local run by John O'Roarke?

A It doesn't refresh my recollection as to the time. I have never seen that particular document before. But I know that they did have some negotiation. I just don't honestly recall exactly when it was.

Q And this doesn't refresh your recollection at all?

A That doesn't in any way refresh my recollection that it took place at that particular time although that document has a date on it.

MR. NESSEN: I offer AC in evidence, your Honor.

THE COURT: Any objection?

MR. WENTZEL: May I see it?

(Pause)

MR. WENTZEL: Your Honor, this appears to be a copy of the minutes of the executive board of, I guess it is UTOG, but I notice that apparently counsel has drawn red lines into various things and I don't think that is the proper way to do it.

THE COURT: That's just a matter of mechanics subject to any use of red lines being cleared up. Do you have any objection?

MR. WENTZEL: No.

THE COURT: All right, we'll take care of that.

AC is received.

(Defendant's Exhibit AC for identification received in evidence.)

xxx

THE COURT: There may have been an oversight. We have got S through V admitted, the franchise tax.

MR. NESSEN: Your Honor, it is out of order because I premarked in an effort to --

THE COURT: Did you intend to introduce W?

MR. NESSEN: Yes, I will. I will introduce those in due course.

What was the last one you have?

THE CLERK: V was the last one that was received. W was in that group and it is the 1964 franchise tax report.

MR. NESSEN: So we are up to Z.

THE COURT: Was it just an oversight?

MR. NESSEN: No. It was in an effort to save time. I have premarked and I am taking them a little out of order because I was surprised at the witness' answer, that's all. I am terribly sorry.

Q Let me just read the beginning of this. This is the minutes of the executive board meeting held on June 29, 1964, of UTOG.

"Meeting opened at 8:10 by our first vice president, Milton Spitzer. Roll call, business manager's report.

"In relation to our getting a charter from the Teamsters union, a letter was received from Joint Council No. 10, IBT, signed by John O'Roarke, president, which stated that our request for an owner-driver charter would be considered in the executive board meeting of the Joint Council 16 on July 7, 1964."

Reading still:

"It was pointed out by Mr. Baron, Mr. VanArsdale is now behind the Taxi Drivers Alliance and this is something to watch very closely."

Now, Mr. Peterman, I notice in your weekly, Taxi Weekly, that there were, from January 1st, through June 15th, three articles dealing with unionization, for union problems. Do you recall making that study?

A Yes. I recall that the study was made.

Q At the same time, going along, there was an article, one of those three articles was on March 9, 1964, entitled "Bye-Bye, Jimmy," do you recall that?

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A The title sounds familiar.

Q You didn't write that article, did you?

A I don't think so.

Q You don't have any doubt, do you, that you didn't write that article?

A I just said I don't think so. That's the limit of my recalling.

Q Do you recall testifying at depositions that you were positive that either Mr. Wysinger or Mr. Zeff wrote that article?

A I am saying I don't think I wrote it.

Q And you recall the article --

MR. NESSEN: Your Honor, this issue is in evidence in Exhibit 1.

THE COURT: Fine.

MR. NESSEN: So I don't think I will mark it again.

THE COURT: No, no.

Q "Teamster Czar Jimmy Hoffa has been found guilty on two counts of jury fixing by a federal jury sitting in Chattanooga, Tennessee. Conviction of the loud, stocky Teamsters boss comes as no surprise to thousands of New York City cab drivers Years ago the men of this industry clearly saw Hoffa for what he is," and it goes on to the end, "In this country every man is guaranteed protection of the law and even Jimmy Hoffa is entitled to appeal his conviction. It may be a couple of years more before the law settles its score with Hoffa but New York cabbies knew the score a long time ago."

Now, there was one thing certain you do know, Mr. Peterman, will you just look at the March 9, 1964, issue and satisfy yourself that I have read from it properly?

THE COURT: We know you can read. Please.

MR. NESSEN: All right, your Honor.

Q Now, isn't it a fact that there were articles on unionization that both Mr. Wysinger and Mr. Zeff wrote that you didn't like?

A Yes.

Q And they got into the newspaper?

A Some did and some didn't.

Q And now the only article between January 1st and March 9th on unionization, as I see it, and as you have analyzed it, is this "Bye-Bye Jimmy" article, do you recall that?

THE COURT: Well, that's according to the testimony he has already admitted, that there were only three in that whole period.

MR. NESSEN: Right, your Honor. The other two were later.

THE COURT: Yes, of course.

Q Now, another issue -- and I hate to go back to it -- was the ten cent fare increase that the fleet owners were proposing, do you recall, in the spring of 1964, sir?

A Yes.

Q And isn't it a fact that Mr. Wysinger, through Mr. Zeff's efforts, put in an article on June 15, 1964, a front-page article, you didn't approve of?

A That's right.

Q And that was an article on June 15, 1964, that supported the fleet owners' position, didn't it?

A It did, but that wasn't the reason I disapproved of it.

Q Well, you vehemently argued with Mr. Zeff about his placing Mr. Wysinger's article in a front-page editorial, isn't that correct?

A Yes, because I disapproved of the article as being a poor article.

Q And was it a poor article when Mr. Wysinger said, and I quote, again, this is something in evidence, "We can and should avoid that happening here. No one claims a ten cent increase on the first drop will make the cab drivers rich. That added income to owner-drivers will go toward paying higher operating costs. The fleet driver will benefit from his commission share of the increased revenue, but the liberal and money-saving provision was completely free to him and his family. The health and insurance program. These benefits are possible without boosting the rates to a point where serious rider resistance will be encountered." And that was solidly the fleet owners' position, wasn't it?

A That wasn't what I disapproved of.

Q That's not my question, sir.

THE COURT: He has already said that this supported the fleet owners' position.

MR. NESSEN: May I just ask one question, your Honor?

Q Wasn't this the solid, right-to-the-nub of the fleet owners' position?

A That part of the article was, yes. Not the rest of it.

Q Was there anything in this article that was against the fleet owners' position?

A There were things in the article that in my journalistic opinion made a very poor story.

Q That may be, and you may be an expert on grammar, too, but my question is, sir: is there anything in that article that was against the fleet owners' position?

A Not to my knowledge.

Q You don't have any doubt about that, do you?

THE COURT: He has already said three times that it was for the fleet owners' position.

MR. NESSEN: Your Honor, I'm sorry --

THE COURT: Please. Let's go to something else.

MR. NESSEN: Right.

Q Mr. Peterman, you testified to a meeting with Mr. Botwinick. Do you recall that, on April 17, 1964?

A Yes.

Q And you placed a - made a statement there where you said Mr. Botwinick stated something concerning the fact that Mr. Wysinger was having a quarrel with him, do you recall that testimony?

A Wysinger was having a quarrel with whom?

Q With you. I'm sorry. I said with him but I meant with you.

A Yes.

Q And that came as a surprise to you?

A That's right, because we were having a quarrel at that time.

Q You didn't know of any quarrel at all?

Q And Mr. Botwinick told you about it?

A That's right.

Q You testified back in 1967 in a deposition, and do you recall you were asked about that April 17th meeting, do you recall that?

A Yes.

Q And do you remember you were asked to remember all that you remembered, all that was important in that conversation, do you recall that?

A Yes.

Q And do you remember that you didn't mention that conversation about Mr. Wysinger at all?

A I don't remember whether I mentioned it or not.

Q Well, here, would you look at --

THE COURT: We'll take your word for it. What was the question?

Q The question is: absolutely no mention --

THE COURT: We'll take your word for it. If it isn't there it isn't there, okay.

MR. NESSEN: Thank you, your Honor. I wonder whether plaintiffs will, too.

MR. WENTZEL: I assume you mean throughout the entire transcript?

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MR. NESSEN: Yes. from 111 through 118 in particular where the conversation was gone into.

THE COURT: In other words, the statement that if you disagree, let us know. Mr. Nessen is saying if Mr. Peterman was asked was everything said at that meeting and in his answer or answers he didn't mention any statement by Mr. Botwinick about a disagreement between Peterman and Wysinger, right?

MR. NESSEN: Yes.

THE COURT: Okay. We'll take that as a correct summary of the transcript unless you correct it. Go ahead.

MR. NESSEN: Thank you, your Honor. That saves time.

Q Now, you recall, don't you, that you read a trial memorandum that was written by me after your testimony in depositions, do you recall reading my trial memorandum?

A The one for this trial?

Q Yes. In a blue book?

A I read some papers prepared by you, yes. I don't know whether it had that particular title.

Q It was a memorandum of law outlining what our case would be and discussing certain points of law, do you recall that?

A I believe I went through a document like that.

Again, I'm not positive that it was that particular document.

Q I will refresh your recollection with my magnum opus, if I may. See if that reflects what you remember seeing.

A I think I have seen this before. It didn't have a blue cover, the one I saw. Maybe that's the reason.

THE COURT: Okay. What's the question?

Q It is a fact, isn't it, that you knew, subsequent to your testimony, that our claim was going to be that the dispute with Mr. Wysinger, your dispute with Mr. Wysinger didn't come out in the open until the summer of 1964? Were you aware of that? That was our theory, were you aware of that?

A I don't know whether I -- I just don't remember whether that fact is in there, that that's your claim.

Q You don't remember seeing page 10 and remarking that what I said about the quarrel didn't come out into the open until the summer?

A I don't specifically remember seeing this. My memory of this document is that there were a lot of errors in it so I don't know that I remember this specific article.

Q I know you know there are a lot of errors.

THE COURT: All right, let's move ahead.

Q And there are legal errors, too, did you note that?

A I am not competent to judge that.

Q Particularly about the fourth and fifth causes of action here, do you note any errors about that?

THE COURT: Let's go. Let's not argue with the witness about your trial brief.

Q Now, you said on direct examination that basically there was no change in policy of Taxi Weekly in 1964. Do you remember that? You used the word "basically."

A I don't remember the exact wording, no, but if it is in there, it is in there.

Q Well, that's what my notes show. Is it a fact that there was no change in policy in 1964 of Taxi Weekly?

A Are we talking about the whole year?

Q Well, you were talking about the whole year, weren't you, on direct examination?

MR. WENTZEL: I don't believe he was, your Honor.

THE COURT: Can we approach it some other way?

MR. NESSEN: I am, your Honor. I am getting to it.

Q Well, let me understand. Was there a time in 1964 where you changed the policy, the basic policy of this newspaper?

A Yes, sir.

Q And when was that, sir?

A When I became sole owner of the paper, I no longer took into consideration the viewpoint of Mr. Wysinger because he wasn't there any more.

Q Is that all?

A That's the major change that I can recall.

Q What was that viewpoint of Mr. Wysinger that you changed?

A He generally wanted to go along without examining analytically or critically things that people said and to accept them more or less as the policy of Taxi Weekly, whereas I was much more in favor of thinking for myself and deciding what the policy of the paper would be, and whether he was a partner of mine and whether he was president, I would attempt to consult with him on what I thought would be the best policy.

Q What people said, you said. Which people are you talking about?

A The leaders of the industry.

Q The leaders of what segment of the industry?

A The fleet segment, the driver segment.

Q He would go along with the owner-drivers and the

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fleets, is that right?

A Yes.

Q Is that what you are saying?

A Yes.

Q And suppose there had been a quarrel -- not a quarrel but wasn't there a, certainly in the spring of 1964, a different position taken by the owner-drivers or the majority of the owner-drivers and the fleet operators on at least one issue we know about, what then?

A That was fully reported in Taxi Weekly.

Q I understand, but what was Mr. Wysinger's position?

A On what?

Q Since there was a dispute, and he followed what people said, that the people he followed, who he followed were disputing among themselves, what position did Mr. Wysinger take?

A That was the difficulty with this position. That was the difficulty.

THE COURT: What was that difficulty?

THE WITNESS: The people disputed things and he didn't know what to do.

Q Isn't it a fact that both he and Mr. Zeff, in the spring of 1964, and then in the summer of 1964 Mr. Zeff was telling you that you were foolhardy in not going along with the fleet owners' position? Didn't they say that to you?

A I recall Mr. Wysinger telling me that if Taxi Weekly didn't toe the line and do what the fleet owners wanted, McIntyre would start a paper. I recall that, yes sir.

Q You do recall that now?

A Yes.

MR. NESSEN: I move that be stricken as unresponsive.

THE WITNESS: He said that a number of times.

Q Now, he pointed out to you, didn't he, that close to 70, maybe 80 percent of the income, the circulation income here came, for Taxi Weekly, came from these fleet owners and that you were foolish if you thought that you were independent?

A No, he didn't.

Q He didn't mention that?

A He never quoted those figures to me.

Q You knew that the vital circulation for Taxi Weekly was going to the fleet owners, didn't you?

A I knew a portion of the circulation. I knew that revenues of Taxi Weekly came from advertising.

Q I understand, but didn't you think that the circulation was vital?

A It was important, certainly. I'm not disputing that.

Q Do you mean to say that you didn't think that the circulation going to the fleet owners, and who were distributing them to their drivers wasn't vital to the success of Taxi Weekly? Is that what you are telling us?

A I'm saying that the more important source of revenue for Taxi Weekly was its advertising.

Q Was that true in 1960?

A It was true in '64. I am not positive of what the figures were in 1960.

THE COURT: Just to save time, you had to have both circulation and advertising, right?

THE WITNESS: Yes.

THE COURT: I mean just as a rough, general thing, if nobody is going to advertise in your paper, if it doesn't have any circulation.

THE WITNESS: But they would advertise if they didn't have any fleet driver circulation that was bought by the fleet owners. They would still advertise to reach the owner-drivers. That's whom they were advertising to reach in the main.

Q Would you agree with us that in the three years prior to 1964, that the circulation income of Taxi Weekly went from around 50 to 40 percent of your income?

A I can't agree or disagree until I look at the figures.

THE COURT: That's a matter of record. That's a matter of record.

MR. NESSEN: Yes, it is, your Honor.

THE COURT: Okay, you don't have to ask him about that.

Q Now, on your issues, if I may, on the top of your issues you would say, "By far the largest circulation of any taxi publication anywhere," and that was important, wasn't it, to get advertisers to show what your circulation is?

A Yes. It was what I felt a nice catchy slogan to have there. I don't know that the advertisers particularly were concerned with circulation to others than those whom they wanted to reach through their advertising.

THE COURT: Being who?

THE WITNESS: The owner-drivers, the manufacturers and sales agencies for cars wanted to sell these cars to the owner-drivers.

And the fleet owners who also read the paper but not particularly for the fleet drivers. The fleet owners were contacted more importantly by direct contact because they were smaller in number.

Q Weren't the fleet owners the biggest purchasers of Dodge, Ford, Plymouth, et cetera, cabs? Weren't they the biggest purchasers?

A They were bigger purchasers than the owner-drivers but you don't pay for 11,000 circulation to reach eighty people. That's not how advertising is done.

Q But if those eighty people are subsidizing your newspaper, that might be important to an advertiser, wouldn't it?

A I don't know what bearing that assertion has.

THE COURT: Let's take a break.

(Recess)

SEYMOUR LESTER PETERMAN, resumed.

CROSS EXAMINATION CONTINUED

BY MR. NESSEN:

Q Mr. Peterman, just five minutes on the line we were going.

You mentioned to his Honor's questioning, in fact, that the advertisers wouldn't be concerned about getting to the drivers of taxicabs operated by fleets. Is that correct?

A I believe I said -- and if I didn't I would like to be more specific -- most advertisers, or at least those who were advertising products that had to do with the vehicle, the purchase of the car, the servicing of it, or two-way radios, perhaps, or taxi meters, which would be products which would be bought or service which would be bought by operators of cars, or taxis wouldn't have much interest in reaching the fleet driver since he didn't buy those services for the taxis. But the other type of advertiser, of which we had some, and it was growing, would be interested in reaching the fleet driver, but the major portion of the revenues was the automotive type.

Q Such as in Judge Griesa's stipulation that he read to the jury, advertisers for hotels and the like, they would be concerned, wouldn't they, whether you were reaching the drivers and fleet owners?

A Yes.

Q And the fact of the matter is, the circulation -- I put it to you again -- the advertising money, plus the circulation money depended a great deal upon how many of your newspapers were being distributed? Isn't that a fact?

A The circulation money depended on it. The advertising money depended upon the type of taxi man who was getting it. That is just what I tried to explain before.

Q So your belief was, and the last question, that the cancellation of these bulk subscriptions by the taxicab drivers really wasn't of great concern to you?

A I didn't say that at all.

Q Was it vital, this circulation, or not?

A It was of great concern to me that I was being ganged up on. It certainly was.

Q Isn't it a fact that you told us that before any advertisers had cut down in the fall of 1964, that when you bought this business from Mr. Wysinger, you bought a damaged business because the bulk subscriptions had been cut down?

A I certainly did.

Q And you realized it was vital?

A I don't know whether I used the word "vital" or not, but it was certainly important. But the point I am making is the revenues from advertising were greater than the revenues from circulation.

Q And they had been for how many years greater?

A That I don't know.

Q Was there any history of their being greater?

A I just don't know.

THE COURT: What I am not clear on at this

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point is this:

BY THE COURT:

Q About what portion -- I guess it was in that stipulation I read -- was more than two/thirds of your weekly circulation went to fleet owners, right, two/thirds or more? That's what we said.

Now, is there any question as far as to whether your paper could or could not survive if the fleet owner subscriptions were cut out?

A If the fleet owners' subscriptions were cut out completely but nothing else --

Q Let's just assume that because I think maybe that's a little confusing to me and the jury. Let's just assume hypothetically that the fleet owners' subscriptions were out of the picture, withdrawn.

Now, could your paper keep going?

A If nothing else had happened, in my opinion it could keep going.

Q If the fleet owner subscriptions were out, would it be your judgment that in the normal course any advertising would be lost or would the advertising just keep up as it had been?

A In my opinion, the advertising for the automotive --

Q I am talking about advertising in toto? Some of the advertising would be lost, wouldn't it?

A Some of the advertising that depended upon how many drivers, whether they were owner-drivers or drivers, might have been lost.

But it could possibly have been recaptured if the remaining circulation was a better readership for the paper. In other words, advertising depends upon a factor of two things, really: circulation, that's numbers, plus how well the paper is read, so that if you produce a better paper that reports the news, and earns the respect of the people in the industry, it is better read. Therefore, they respond to the advertising. Therefore, you can possibly get more advertising.

Q As it turned out, did you lose subscriptions of the owner-drivers as part of this subscription picture?

A Not to any extent, no.

BY MR. NESSEN:

Q Did you carry on any promotions to get owner-drivers?

A Yes.

Q After '64?

A After '64, I'm not sure. I know I did at times during the years.

Q But you didn't up to 1964, isn't that a fact?

A I'm not sure. I may have in '65. I possibly may have in '66 although I don't know.

Q You don't know, do you?

A No.

MR. NESSEN: So there will be no question, your Honor -- again I am reading from a matter in evidence -- the circulation income the end of March 31, 1964, was $43,000. The advertising income was 57 -- 57 against 43.

The circulation income in 1963 was 41 as against 48 for advertising income.

And in 1962 the circulation income was 51,000 against 49,000 for advertising.

I won't belabor it any more.

Q I just would like you to look at your September 21, 1964, edition of Taxi Weekly. Do you have that?

A It is available.

Yes, I have it.

Q Mr. Peterman, this was the first issue after you bought Mr. Wysinger out, isn't it?

A It is the first issue that came out after that, yes.

Q That's what I asked.

A Yes.

Q And you made a statement of policy?

A Yes.

Q And right there on the front page -- again this is a journal that's in evidence -- it says, "State of Policy. As reported in a box elsewhere on this page, Abraham Wysinger has retired from this new paper and I have assumed full control. In its 32 years this newspaper has fought for many a good fight on behalf of the taxicab industry. Its success in these endeavors is reflected in the fact that this city has just about the finest taxicab industry you can find anywhere in the world. However, merely basking in the glory of a job well done in the past can often blind you as to what needs to be done today so although wisdom indicates one would learn from the past, necessity requires that the past be used merely as a guide and not as a" -- something or other. "For there are urgent problems facing this industry today and where the solution of these problems necessitates a new approach, so be it. To do otherwise is to betray a trust, a trust that a newspaper must have from its readers in order to deserve the readership and I intend to see to it that this newspaper is worthy of all its readers, all of them."

Now, Mr. Peterman, isn't it a fact that you believed September 21, 1964, that you had to change the policy of Taxi Weekly to meet urgent problems in the industry?

A This isn't quite what I said. I think what I said here stands for itself.

Q I am asking you -- just follow me -- there were urgent problems facing the industry today. That's what you wrote September 21, 1964. And those urgent problems, could you just give them quickly in a telegraphic way, and tell us what they were?

A There was a lot of disunity in the industry. My point was where the solutions need a new approach then you should have a new approach.

Q And where the solutions of these problems necessitated new approaches, so be it. Weren't you, in fact, telling the fleet owners that you no longer were going to abide by their wishes? Isn't that a fact, what you were saying here?

A I was saying what the words say, to be guided by the past and to learn from it but don't be enslaved by it.

Q Weren't you really challenging the fleet owners to tell them that you were independent? I don't blame you for that. I am independent. But weren't you saying that to them?

A I wasn't challenging anybody.

Q You were telling them that you would change the policy of the newspaper as you saw it and you would be no man's handmaiden, so to speak?

A I wasn't saying that I was going to change for the sake of change. I was saying that I was going to improve.

Q All right. Let's see where we can go from here.

MR. NESSEN: Can we agree, your Honor, that the circulation advertising schedules, Schedules 1, 2 and 3 that appear in the answers to interrogatories of my opponents are authentic and real?

THE COURT: Is this something you covered earlier today?

MR. NESSEN: I hoped we would cover it. Their answers, and I suppose their admissions, and we accept them.

MR. WENTZEL: We didn't get time to cover this this morning before we started.

THE COURT: The answers to interrogatories, doesn't he have a right to introduce those?

MR. WENTZEL: Sure.

THE COURT: Okay.

MR. NESSEN: Then why don't I introduce them, your Honor? They are down here somewhere.

THE COURT: We don't have to pause. You have questions to ask about these?

MR. NESSEN: Yes, this will save time, your Honor, and I think we can agree to it. Could you mark this as the next exhibit I have and I offer it in evidence. Actually it is part of X so we can make it X1.

THE COURT: Defendant's Exhibit X1 will be received.

MR. WENTZEL: Your Honor, all I ask is that if there are answers, that there be questions.

MR. NESSEN: These are exhibits. I think they speak for themselves.

(Defendant's Exhibit X1 for identification received in evidence.) xxx

Q Mr. Peterman, beginning, as I see it, February 1, 1965, and maybe earlier, you had on the top -- you took down the largest circulation thing and you put "The Completely Independent Taxi Newspaper."

That's what you put on top. Do you remember that?

A Yes.

Q And that hadn't been true, you hadn't used "The Completely Independent Taxi Newspaper" in the Wysinger days, had you?

A Well, I had put on the slogan "The Largest Circulation" but I no longer had it.

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Q Independent, but my question is, you didn't ever put on the top of Taxi Weekly when Mr. Wysinger was there "The Completely Independent Taxi Newspaper"?

A Not that I can recall.

Q And you told people right on the top of the newspaper that anyone that wants to pressure on what appears in Taxi Weekly had better go peddle his influence elsewhere, you wrote that?

A Yes, that was when the advertising cancellations started coming in.

Q I ask you that, I asked whether you wrote that.

A Yes.

Q And that was a challenge you thought to the fleet owners?

A That was my reaction to the cancellation of the advertising.

Q Now, sir --

THE COURT: What was the statement again, Mr. Nessen?

MR. NESSEN: Anyone who wants to pressure us on what appears in Taxi Weekly had better go peddle his influence elsewhere. I believe that happened in the winter of 1965. I happen to have an edition of February 1, 1965. It might have been earlier.

Q Do you remember that?

A It started just around then. I think a couple of issues before that.

THE COURT: This was kind of a slogan put in each issue?

THE WITNESS: That's right.

THE COURT: Okay.

Q And you knew, just a question and I won't belabor it and please answer it if you can -- you knew that when you were going to take issues contrary to the fleet owners' position and come out that way that that was risky in terms of your business as an economic matter?

MR. WENTZEL: Could I ask that Mr. Nessen put a time frame in that question? Are we talking still about 1965?

MR. NESSEN: '64. I'm sorry.

MR. WENTZEL: Back in '64.

A What part of '64?

Q Well, let's not do that. Let me withdraw that and move on to something else.

THE COURT: All right.

Q Mr. Peterman, I see in your deposition testimony, but I didn't hear it on direct, and I wonder whether you would tell us about this: isn't it a fact that Mr. McIntyre who was a public relations man for the fleet owners, that he came to you in the spring of 1964, and he asked you to put something -- he gave you something to put in your newspaper? Do you remember that?

A Yes.

Q That was the spring of 1964. And it was a detailing of the fleet owners' position in regard to the fare increase. Do you remember that?

A I don't remember that it was that content at all. I don't remember even seeing it.

Q You don't remember seeing it?

A That's right.

Q Didn't he hand it to you?

A He came up to the office with some material, yes.

Q And it was a press release, wasn't it?

A I don't know what it was.

Q Haven't you testified that in deposition back in 1967 -- I know a lot of time has gone by -- in a press release?

A It might have been. Whatever it was.

Q And do you remember testifying at depositions, page 57, did you tell him you would not publish anything about a fare increase?

A I told him -- this i Mr. Peterman at pretrial depositions -- I told him at the time I would not publish anything that was supplied by him.

Q By him?

A That's right.

Q That referred both to his conversation regarding the union?

A That was a general statement.

Q Now that was a general statement you made to the public relations man of the fleet owners in the spring of 1964 -- isn't that correct?

A I made that statement in response to his statement to me.

Q And that was your testimony -- all right. Okay.

A He didn't ask me to publish that. He told me.

Q I see. And this is what you told him, and what I just read was true?

A I wasn't going to take orders.

Q I understand, but what I read to you, was that true?

THE COURT: That's his testimony. Why don't you read it?

MR. NESSEN: I did read it.

THE COURT: You can refer it to the jury.

Q And isn't it a fact that in the beginning of July, Mr. McIntyre placed a full page ad in Taxi Weekly giving its position in regard to the pay increase?

A I don't know that to be a fact.

Q Do you know that it appeared in an issue --

MR. NESSEN: Let's have this marked, please.

MR. PRATT: We have got the volume.

MR. NESSEN: Well, I would like it marked separately, if you please, with the next letter.

Please make that AG.

xxx (Defendant's Exhibit AG marked for identification.)

Q Mr. Peterman, I show you a full page ad that appeared in Taxi Weekly on July 27, 1964.

A That one I remember.

Q You remember that?

A Not one in early July as you said before.

Q No. I am asking you wasn't this placed in early July? Isn't there a bill for the placement of this in early July?

A I'm not aware of any. If there is, let me know. I am not aware of any.

Q You are not aware of it?

A No.

Q When was this ad placed, do you have any idea?

A Oh, no.

Q You have no idea?

A I wouldn't remember at this time. I would assume in time for the deadline for that issue which would have been a few days before that date.

Q Could have been earlier, couldn't it?

A It could have been. The procedure is to place an ad for the next available issue.

Q Right, and you only put out eight pages, didn't you, unless you had to jump to twelve because it is not economical to publish somewhere in between?

A The press wouldn't take usually ten pages or so, but I never held an ad up for a successive issue.

Q And so, Mr. Peterman, in fact, Mr. McIntyre and his client, Metroplitan, was billed for this ad?

A I would assume so.

Q And how much was a full page ad?

A A full page ad was something like 275 or 295 dollars. I'm not positive of the exact rate. It was somewhere between 250 and 300.

Q I'm sorry, you are looking at something.

A This is a news summary of 1974 Taxi Weekly.

Q You understand everything you look at really I am entitled to have marked.

THE COURT: Are you offering AG?

MR. NESSEN: Yes, I am, your Honor.

THE COURT: All right. Received.

(Defendant's Exhibit AG for identification received in evidence.)

xxx

MR. NESSEN: Maybe I could let the jury look at it.

THE COURT: Okay.

Q Now, the dispute with Mr. Wysinger, do you remember you testified on direct examination about that?

A Yes.

Q Do you remember that you talked about the dispute with Mr. Wysinger that got into litigation with a dissolution proceeding, do you recall that?

A Yes.

Q And actually had there been talk between you and Mr. Wysinger earlier than that about one buying the other out?

A There had been a bit of conversation about that at sometime in the past.

Q And hadn't there been actual drafts of an agreement drawn before the spring of 1964?

A I don't recall any such thing.

Q Do you recall the price of $22,000 you are offering Mr. Wysinger for his interest?

A I don't recall that at all.

Q Do you recall ever going to a lawyer to -- before the spring of 1964 -- to discuss the terms by which you would buy Mr. Wysinger out or he may buy you out?

A Do I recall my going to a lawyer?

Q Yes.

A I didn't go to a lawyer to the best of my knowledge.

Q Did Mr. Wysinger ever give you a draft of an agreement to look over?

A Who was buying whom out?

Q Either you were buying him out or he was buying you, but actually you buying him. Do you remember those discussions in any event?

A There were some kind of vague discussions that never got anywhere. That, I recall.

Q Do you recall the price of $22,000?

A I don't recall any price, no.

Q Do you recall that in the course of your dispute with Mr. Wysinger, that on June 3rd Mr. Margolies, his lawyer wrote your lawyer, and offered to buy your share of Taxi Weekly for $30,0000 cash plus whatever remains in the business?

A I do recall some such letter as that, yes.

MR. NESSEN: Could we have this marked as AH and would you show it to the witness to see if he recollects it?

xxx (Defendant's Exhibit AH marked for identification.)

A Yes, I recall it and I recall my answer to it, too.

MR. NESSEN: I offer it in evidence.

THE COURT: I will receive it. AH is received.

(Defendant's Exhibit AH for identification received in evidence.) xxx

MR. NESSEN: May I read that to the jury, your Honor?

THE COURT: Yes.

(Mr. Nessen read from exhibit to the jury)

Q Now, that dispute got into court, and let me see if I can cut through a lot of this. Please bear with me. I will turn some pages.

Now, in the dissolution papers, Mr. Wysinger accuses you of having taken his -- of there being a dispute and bickering with you off and on over the years, do you recall that?

A I recall the accusation, yes.

Q And you remember he accused you in the winter of 1960 of taking his name off the masthead, do you remember that?

A I recall the accusation, yes.

Q Did you take his name off the masthead?

A I didn't.

Q Did his name disappear from the masthead?

A It didn't.

Q It never did?

A To the best of my knowledge, it didn't, and to confirm my memory of it, I checked the back issues of the paper --

Q And do you have the back issues?

A -- and it was not taken off and if you would show it to me.

Q I mean, you have the back issues?

A They are right here in the courtroom.

Q In 1960?

A Yes.

Q So that that was just a figment of Mr. Wysinger's imagination?

A I believe so.

Q And you have no basis for why he thought that his name had been taken off the masthead?

A No, I don't know why he thought that.

Q Well, we'll take a look at whatever it is, but in any event he was accusing you of having done that, isn't that correct?

A Yes, he was.

Q And there was no question that you were really angry when he put in that front page story about supporting the ten cent fare rise? No question you were angry about that story?

A I was angry about the garbage that was in it about the 1930s that had nothing to do with the present. I was angry with the way the story was written. Not about its support for the fare increase.

Q You didn't like when he went into the history in that story of what he had done and how long Taxi Weekly had been --

A It had nothing to do with the issue at present to lead off a story with five or six paragraphs that are completely irrelevant. That was my point.

Q I understand you didn't like it, and you were very angry at Mr. Wysinger and Mr. Zeff because of it.

A What is the question?

MR. NESSEN: Nevermind.

Q Now, in all the times you were at Taxi Weekly, did you ever, every have an article or an editorial speaking about in favor of the fleet owners' position concerning the position on the larger taxicabs that were manufactured by Checker?

A Could you define that better? Concerned in what way? In any way concerning?

Q Did you ever make a statement in an editorial in favor of the fleet owners' position concerning, relevant to larger cabs manufactured by Morris Markin and Checker?

MR. WENTZEL: Your Honor, I think that's a very misleading question. I don't know if there was any fleet owners' position nor has it been established on that issue.

THE COURT: ~~If~~ there isn't, the witness can answer. I don't think it is misleading.

Q Would you answer it, Mr. Peterman?

A Your question is: are you asking whether I personally or Taxi Weekly did?

Q Taxi Weekly.

A Yes, it did make a statement.

Q When was that?

A A statement favoring the jumbo cab was made in Taxi Weekly in 1953 by Mr. Wysinger.

Q Other than that, was there anything -- that wasn't in favor of the taxicab drivers' position, was it, is that your testimony?

A It was in favor of the jumbo cabs and against the fleet position and it was signed by Abe Wysinger, not by me.

Q In 1953?

A That's right.

Q You weren't there, were you?

A No, I was not.

Q You did some research on it?

A Yes, I did. He told me about it all during the years also that he supported the jumbo cab instead of the stock car, and, therefore, the fleet owners didn't like him. This he always told me.

Q Mr. Peterman, listen very carefully to the question and I would like an answer. If not I will read it here from the deposition.

Can you point to one editorial statement while you were at Taxi Weekly which supported the fleet owners' position as being against the larger cab?

A It was not a crucial issue at the time. There was no reason for an editorial.

THE COURT: Just to save time, as of about 1964, did you understand there to be a fleet owners' position on the jumbo cab? Was there a fleet owners' general position on that subject?

THE WITNESS: The only position I understood them to have was a position against Morris Markin, but not a position on the jumbo cab because it was entirely optional. It wasn't mandatory.

THE COURT: What was their position that you just referred to about Morris Markin?

THE WITNESS: They disliked Morris Markin very much because this related to the time when the jumbo cab was mandatory back before it was changed the beginning of '54.

THE COURT: Well, now, do you recall any editorial comment or anything in Taxi Weekly for or against the taxi fleet owners on that particular problem?

THE WITNESS: There was no comment because it was not an issue at that time. The law had been changed in '54 and it wasn't an issue in '64.

BY MR. NESSEN:

Q It did become an issue though, didn't it?

A Not in '64, no.

Q In '65.

A It became an issue when Mayor Lindsey said that he was in favor of a larger cab.

Q And you --

THE COURT: When was that statement made?

THE WITNESS: He made the statement to me in the fall of '65, during his election campaign, and I reported it in Taxi Weekly, that he wanted a larger cab, and I believe I asked him whether he wanted a larger cab so that there would be a monoply, and he said no, and this was what was reported in the paper.

Q Now, in fact, you, sir, at one time, wrote a report to Mayor Lindsey favoring a larger cab, didn't you?

A I didn't.

Q You didn't at all? Did you make a recommendation?

A No, I didn't.

Q Of any kind?

A I didn't. My recommendation was that the specifications for vehicles be looked into.

Q Didn't you make a recommendation to the taxi panel in favor of a larger cab?

MR. WENTZEL: May I have the date, Mr. Nessen?

Q At any time.

A I didn't realize there was a question.

Q There is a question pending. I'm sorry.

(Question read)

A I didn't.

Q Do you remember being asked this question, page 207, 208 of the depositions:

"Q Do I understand that you at no time recommended to the taxi panel that a larger cab be used rather than a smaller stock car?

"A I don't recall having made such a conclusive recommendation."

A That's right, I was studying it. All I did was study the question. I didn't make any recommendation.

Q And you knew, didn't you, that --

A At the mayor's direction, by the way.

Q You knew that there was only one company at that time that had a monoply on building the larger cab?

A I did, and I wrote to ten different manufacturers asking them whether they would be willing to build a larger cab, ten of them.

Q And who was it that had that monopoly, sir?

A Checker.

Q And who was the boss of Checker?

A Morris Markin.

MR. NESSEN: Your Honor, I think we could save some time if my friends would allow me to put in evidence all the issues of Taxi News, Taxi Industry Auto Rental News for the years 1963, 1964 and 1965.

THE COURT: I don't object to that.

MR. WENTZEL: No objection. 1964 is already in evidence.

MR. NESSEN: Yes, 1965 and '6.

THE COURT: Do you have any other cross?

MR. NESSEN: Yes, I do, your Honor. I have three major lines but I will try to be fast. Can we sit late today?

THE COURT: We can sit a little late. Let's try to finish up your cross.

MR. NESSEN: I think we had a reaction from the jury, your Honor. I don't want to be responsible for it.

THE COURT: I think we need to sit a little late. That's my fault so let's go.

MR. NESSEN: While he is doing that I have some questions.

Q In 1958, did you --

MR. NESSEN: Could we have those marked now?

xxx (Defendant's Exhibit AI and AJ received in evidence.)

Q Mr. Peterman, in 1958 you bought the half interest in this Taxi Industry, Inc., do you recall that?

A Taxi Weekly.

Q Taxi Weekly. I'm sorry.

A Yes.

Q Taxi Weekly, which published the two?

A That's right, yes.

Q And you entered into an agreement?

A Yes.

MR. NESSEN: I offer, your Honor, to cut this short, the agreement, that is undated in my copy, and I presume probably in the original, but it is August, 1958.

THE COURT: Let's have it marked AK.

(Defendant's Exhibit AK for identification received in evidence.) xxx

THE COURT: The volumes of Taxi Monthly were AI and AJ?

THE CLERK: Yes, your Honor.

MR. NESSEN: Is there any objection to this going into evidence? Make sure it is the one you gave me.

(Pause)

MR. WENTZEL: Your Honor, the copy that has been offered in evidence again has underlining.

THE COURT: That's a matter of mechanics.

MR. WENTZEL: I have a clean copy here.

THE COURT: All right, mark the other one. Mark the clean copy.

That will be received as AK.

THE CLERK: It has already been marked.

THE COURT: Okay. Let's go ahead.

MR. NESSEN: Paragraph 5 of the agreement reads as follows:

(Mr. Nessen read from the exhibit to the jury.)

MR. NESSEN: I think it is fair to say that there was a buy-sell agreement involved here and the purchase either on the buy-sell or on the death of the other party was at book value. Is that a fair summation of this or do I have to read it?

MR. WENTZEL: I think so. I would like to hear whether the witness agrees, really.

THE WITNESS: Yes.

THE COURT: All right, it is agreed.

Q Mr. Peterman, do you recall that this agreement, paragraph 8 reads in part, "Abraham Wysinger agrees to devote such time, care and attention to the business and affairs of the corporation as he may deem necessary, requisite and proper and shall be in general charge of the management thereof, and he shall have no interest adverse to the business and affairs of the corporation."

MR. NESSEN: Your Honor, I think I will save, if I may, my argument about this balance sheet for summation although I did have cross examination on it.

MR. WENTZEL: Your Honor, Mr. Nessen just read a half of a paragraph.

THE COURT: You read the rest.

MR. WENTZEL: The beginning of the paragraph which Mr. Nessen just read reads:

"Seymour Lester Peterman agrees to devote all of his working time, care and attention to the business of the corporation and shall be in general charge of the management thereof and shall have no interest adverse to the corporation."

MR. NESSEN: Quite right.

BY MR. NESSEN:

Q You both were to share in the general charge of the management of the business?

A But I would devote full time and he would devote whatever time he wanted.

Q Yes, I understand that. You understood that when you bought into this business?

A That was a basic term that he insisted on.

Q Yes, and you understood it?

A That I devote full time and he come in whenever he wanted to.

Q Right. And now, you got the money, the $15,000, or whatever it was, and I will make that argument from the balance sheet, from your father, didn't you?

A Not quite. My father put up some securities which --

possibly my mother, too, which were used as collateral for a loan which I took out from the bank and which I paid back to the bank.

Q Later?

A Yes.

Q But he was the one who arranged for the financing of the $15,000?

A Well, I arranged for it with his collateral.

Q With his help?

A Yes.

Q And, now, on September 14, 1964, you bought the second half of that business?

MR. NESSEN: Is that agreement in evidence?

THE COURT: No.

MR. NESSEN: Then we should put it in. Let me see if I marked this one up.

I have two copies of this. Do you have the original and maybe we can put that in instead? I think this is it, would you agree (handing)?

(Defendant's Exhibit AL for identification received in evidence.) xxx

MR. NESSEN: Could I mark two other, offer, in fact, two other exhibits that I have not as yet that were given to me just after the recess? One is the profit and loss statement of Taxi Weekly, Inc. for the period ending March 31, 1958, and one for the period ending March 31, 1959.

THE COURT: All right, let's have those marked.

(Defendant's Exhibits AM and AN for identification

xxx received in evidence.)

THE COURT: I will receive those in evidence.

MR. NESSEN: I would like to put in, and I think might be helpful, your Honor, if we had the September 30th financial statement of Taxi Weekly introduced at this time.

THE COURT: Let's have that marked.

MR. NESSEN: I think they are marked, your Honor. They are all marked and are in evidence, is that right?

MR. WENTZEL: You are a couple of jumps ahead of me.

MR. NESSEN: I want another financial statement. I am just winding up the exhibits, your Honor.

THE COURT: Do you have any further questions of Mr. Peterman?

MR. NESSEN: Yes, I do, your Honor.

THE COURT: We can take care of the documents later. Let's just finish the questioning of Mr. Peterman.

MR. NESSEN: Fine. Sure.

BY MR. NESSEN:

Q Now, Mr. Peterman, by the middle of September, or let's put it up to September 1st, there had been no falloff in advertising, had there, in Taxi Weekly?

A I am not positive. There may have been a little bit.

Q Well, you --

A But there was no major falloff. There may have been some.

Q Well, the figures will speak for themselves on that.

One question about UTOG and ITOC and let me wind that up.

Do you realize that in the summer of 1964 that UTOG formally voted to go out if ITOC? Do you remember that?

A At this point I don't recall that.

MR. NESSEN: I wonder whether we could stipulate to that fact if I showed this to my opponent, your Honor, (Handing).

August 10, 1964.

THE COURT: Can we stipulate that?

MR. WENTZEL: Yes,sir.

THE COURT: And what is the stipulation, Mr. Nessen?

MR. NESSEN: The stipulation is that by unanimous vote of UTOG it withdrew from ITOC, is that right?

MR. WENTZEL: Yes.

MR. NESSEN: On August 10, 1964.

THE COURT: All right. That's stipulated.

MR. NESSEN: Your Honor, I have just one line left and maybe we can go home for the evening. There is one thing that I would like to reserve on, two possible lines that I will speak to you at the Bench about.

THE COURT: Well, why don't you finish all that you need to do now?

MR. NESSEN: Fine.

THE COURT: And then we can start with another witness tomorrow, okay?

MR. NESSEN: Could I speak to you just a minute after I finish this so you will understand what it is about?

THE COURT: Okay.

Q Mr. Peterman, you never made any attempt to sell Taxi Industry Auto News, the Rental News, the monthly magazine, to anyone from, say, the spring of 1964 right through to 1966 as a separate entity?

A No.

Q And you never, did you, in 1961, 1962, 1963, 1964, or 1965 -- you never attempted to sell Taxi Weekly separately, find out what its value was? Did you?

A I never wanted to sell Taxi Weekly, no.

THE COURT: I think he is just asking for a specific purpose, did you ever make any effort, yes or no, to sell Taxi Weekly as a separate entity?

THE WITNESS: Well, it is difficult to answer that question yes or no.

THE COURT: Okay, how can you answer it?

THE WITNESS: After the pressure to dissolve the corporation started, I approached a few people in the cab industry to ask them whether they were interested in buying Taxi Weekly.

Q The newspaper?

A The whole thing, or the newspaper.

THE COURT: Well, his question was about the newspaper separately. Did you approach them about that?

Q Or was it the company in general?

A I am not sure. I think it was the newspaper separately but I am not sure.

The purpose was --

THE COURT: All right, look, his question --

A I wanted to find out who was doing this to me.

THE COURT: Well, Mr. Peterman, that's beyond --

my question simply was: did you ever attempt to sell Taxi Weekly separately? Now, you are saying you are not sure.

THE WITNESS: I am saying I didn't attempt to sell it but I attempted to appear to sell it, to want to sell it to find out who was doing this to me. That's what I did.

THE COURT: I am going to strike that.

Q Just focus, and your counsel on redirect will have an opportunity to explain it and maybe we can get out of here this evening, but just focus on my question.

Did you appear to come to people and offer to sell the business Taxi Weekly, Inc., the company, in 1964?

A Yes.

Q To whom?

A I don't recall now. Now that I think of it, I talked to two people that I can recall now.

Q Who is that?

A Morris Markin and Henry Freedlander.

Q And that's all?

A That I can recall.

Q And Morris Markin was Checker?

A That's right.

Q And Henry Freedlander was the lawyer for Metropolitan, is that correct?

A No, sir.

Q At the time?

A Yes. And I think there were other, possibly, a couple of other people.

Q Who were the couple of other people?

A I recall one was a broker of some kind who I believe approached me, and I wanted to find out whom he was acting for so I spoke with him.

Q Did you telephone a man named Walter Grimes in Washington and offer your business to him?

A I believe that from -- I believe I did have a discussion with somebody by that name,yes.

Q Didn't you, in fact, while you were negotiating and disputing with Mr. Wysinger, on August 14, 1964, call Mr. Walter Grimes whom you heard was really the best agent in this business, and offer Taxi Weekly for sale?

A I don't think I heard that he was the best agent in this business.

Q All right. Let's eliminate best agent. You heard that he was in the business of brokering newspapers? Didn't you?

A Yes, for the purpose that I just mentioned.

Q For what purpose?

A To find out who for sure was trying to strangle me.

Q What was Walter Grimes supposed to do?

A He wasn't going to buy it for himself.

Q Who was he supposed to go to?

A Whomever was after me.

Q Mr. Peterman, was McGraw-Hill after you?

A I really don't know.

Q Was Radio and TV Weekly after you?

A I don't think they were.

Q Didn't Mr. Walter Grimes report to you that he had gone to McGraw-Hill, Radio and TV Weekly, indeed, fourteen people and offered your newspaper, and weren't you told they weren't interested?

A I was interested in whom he would go to in the cab industry.

THE COURT: Oh, please, let's be responsive. Now listen to that question.

Q Yes or no.

A I don't recall that McGraw-Hill and TV Weekly and all that.

Q Did he tell you that he had offered them to first eight people and then six others?

A I don't recall numbers and I don't recall those names.

Q Did he tell you, sir, did he tell you that he had offered and spoken to Mr. Golden at Stamp and Company and Stamp and Company refused to consider Taxi Weekly?

A I don't recall that.

Q Did he tell you that he had gone to Mr. Archer Trent, a printer in Sommersett, New Jersey, and they had not shown any interest?

A I don't recall that. I didn't show any interest in these people.

Q Are you saying they showed an interest in you and you refused?

A No, I am saying I don't recall because these people weren't the ones I was interested in so the names didn't register.

Q Didn't he say that he spoke to Parkes, a publisher in Bluemont, Pennsylvania, and he offered your business to Irwin Robinson, a publisher of Travel Weekly? You don't remember that?

A No, sir.

Q Didn't he read off a list including that he spoke to Economics in Oradell, New Jersey? Do you remember that?

A I don't remember these names.

Q How about Joseph Shore, have you heard of him?

A No.

Q Mr. Schishnell, a publisher of Schishnell Publishing Company?

A No, sir.

Q How about Mr. Jacobson of Jacobson Publishing Company, did you hear him say he offered Taxi Weekly to him?

A No.

Q And Leader Publishing Company?

A No.

Q Radio and TV Weekly?

THE COURT: You mentioned that.

Q Did he mention one name to you that he had approached on your behalf and was turned down?

A I can't recall whether he mentioned actual names to me.

Q He didn't put you in touch with any of these companies, or any company, did he?

A I don't recall. These names aren't familiar to me except the big ones that I know by virtue of their being on the newsstand.

Q Did you tell Mr. Walter Grimes that he should go out and only offer your business to people who you thought were out to get you, put pressure on you?

A I told him to offer the publication. I wanted to see what would come in.

Q You remember that now, don't you?

THE COURT: Let's wind it up.

Q Did you give, as a reason for selling the business, a dispute between owners to Walter Grimes?

A I may have.

Q You didn't say anything to him about the cancellation of any bulk subscriptions, did you?

A I don't recall.

Q Well, you know you didn't?

A I don't know.

Q And did you say that the price you wanted was $150,000?

A I don't know.

Q Well, take a look at this card and see if this refreshes your recollection, sir.

MR. NESSEN: Mark it first, please.

xxx (Defendant's Exhibit AO marked for identification.)

MR. NESSEN: Let me add to this questioning.

Q Did you tell him that Taxi Weekly included Taxi Industry and Auto Rental News, a monthly magazine, and Taxi Weekly, a newspaper? Do you remember telling that to Mr. Grimes?

A It is correct but I don't remember telling him.

Q And did you tell him that your annual gross was $150,000?

THE COURT: Do you have a card that says all that? Let's cut this short.

MR. NESSEN: Just a bit, your Honor. I am really truncating this quite a bit.

Q Did you tell him that your annual gross was $150,000?

A I don't recall saying that.

Q Well, would you take a look at the card? I think his Honor is right, and see if that refreshes your recollection?

THE COURT: What is the exhibit number?

MR. NESSEN: That's AO for identification.

Q And look on the back at the names of the people under "Offered To."

A These are the names you just read off.

Q Yes, sir. Does that refresh your recollection?

A No.

Q Does it refresh your recollection that while you were negotiating with Mr. Wysinger to purchase his interest, that you were offering this to the broker for $150,000?

A No. This card is not a card that is in my handwriting.

Q I understand that.

A I don't know whose handwriting it is.

Q The question is: do you remember Walter Grimes?

A I do remember the name, yes, sir.

Q And do you remember talking to him and offering your business?

THE COURT: I think we're really wasting time. We'll adjourn now until --

MR. NESSEN: Just one question, your Honor.

Q Did you tell Mr. Wysinger that you were offering your business to Mr. Grimes?

A We were having a dispute then and I didn't tell him anything.

THE COURT: The answer is no, right?

We'll adjourn until ten o'clock tomorrow, and the jury will retire and I will talk to the lawyers for just a moment.

(The jury left the courtroom.)

(Time noted: 4:55 p.m.)

THE COURT: The lawyers are going to work on the stipulation about circulation and advertising tonight

MR. NESSEN: I think the circulation is done, your Honor.

MR. PRATT: A small amount of work, I think.

THE COURT: Fine. Then we can have that ready tomorrow.

Then we're basically finished with Mr. Peterman subject to possible loose ends of things that aren't able to be stipulated.

MR. DINKES: If your Honor please, I am the next to examine Mr. Peterman.

THE COURT: I assume Mr. Nessen has gone into things quite thoroughly and I assume you are going to be very short. What points did you want to talk about?

MR. NESSEN: There were two. I wanted to check because I really haven't had a chance. I was surprised really at the testimony of Suchman concerning the talk with Suchman, and Murstein, and what I have, your Honor, is a transcript that was given to us that we didn't verify that's pretty bad but there are certain things there that I may want to ask him.

THE COURT: You need to look at that tonight, of course, and we'll just finish up briefly with Mr. Peterman, tomorrow, Mr. McGrath, Mr. Dinkes and anything else that you need to cover and where do we go after that?

MR. WITNESS: The two witnesses that were here today I spoke to and they will be here at ten o'clock tomorrow.

THE COURT: And how many advertisers?

MR. WENTZEL: We sent some people out with witnesses.

THE WITNESS: We have a number of witnesses who are out of town and out of the jurisdiction of the court.

THE COURT: The only thing is we want to go right straight through tomorrow with a full day and if you are not ready he is not going to be on. If he is not here you will have to rest and Mr. Nessen will go on and I don't mean maybe. I told you we'll have a week trial and we may miss it by a day but we're not going to have a half-day while Mr. Kobak is in California.

MR. WENTZEL: Mr. Kobak will be on his way back from California.

THE COURT: He better get on that plane tonight.

MR. PRATT: Isn't the point that we have a lot of other material?

THE COURT: I don't think you have got a lot of material.

MR. WENTZEL: If I miss by an hour or two, your Honor, I don't see what the problem is. I have got the man coming here the first thing Monday morning. Your Honor, his testimony is on damages.

THE COURT: We will get to damages tomorrow. This case is not a long case.

MR. NESSEN: You have moved it, I will say that much.

THE COURT: I am just telling you, if I am ready, I will go into the defense case and I don't mean maybe so you better have him.

MR. WENTZEL: I want to be able to put him on. That's all I am saying. I would hate to think that my cooperation with you this week is going to cost me my expert witness.

THE COURT: Nobody did me any favors. I don't owe any debts to delay the trial for any reason. I am just saying you must have your witnesses ready and if you announce to me that you are finished and there is time left we'll go immediately to the defense case and that's that. Okay?

MR. WENTZEL: Your Honor, I will abide by your rulings but I may not have the man here.

(Adjourned to Wednesday, July 9, 1975, at 10:00 a.m.)

TAXI WEEKLY, INC., et ano

-versus- 66 Civ. 2827

METROPOLITAN TAXICAB BOARD OF TRADE,
INC., et al.

July 9,1975
10:00 a.m.

(Trial resumed.)

(Jury present.)

MR. NESSEN: There is no further cross, your Honor, but there is W for identification that we would like to put in evidence.

THE COURT: Certainly. We will receive that.

xxx (Defendants' Exhibit W for identification received in evidence.)

THE COURT: Mr. Dinkes, do you have any cross?

MR. DINKES: Can we approach the bench, your Honor?

THE COURT: Okay.

(Discussion at the bench.)

MR. DINKES: Your Honor, I don't wish to waive cross-examination,but with your permission, I would be willing to defer cross-examination until my case -- until it is time for my case, because there is a possibility that there might be a dismissal and I don't want to clutter up the Court with my cross-examination.

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THE COURT: I think it makes sense to me, if there is no objection, if you are willing to defer your cross, I would be glad to have that, because I think that you may be able to focus your cross better at a later stage.

MR. DINKES: I have no objection to that.

THE COURT: Is that all right with you?

MR. WENTZEL: I have some redirect based on Mr. Nessen's cross. I also have a number of items that I was skipping over as we went along the first three days.

THE COURT: We all understand that.

MR. WENTZEL: I want to do that.

MR. NESSEN: Show me the documents.

MR. WENTZEL: I want to have Mr. Peterman say a few things about them.

THE COURT: What do they relate to?

MR. WENTZEL: A number of issues, your Honor.

THE COURT: Interstate commerce?

MR. WENTZEL: That is just one issue.

THE COURT: Well, you see, what I was hoping to do, was to get pretty far on stipulating the facts that can be stipulated. Now, I don't want to keep putting you off, but I would like to, before we get into the kind of things I think you are talking about, statistics about --

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MR. WENTZEL: A lot of them are just miscellaneous documents that I had ready yesterday morning. We didn't get to them, and as I went along, I said that.

THE COURT: Are these things -- it seems to me that -- I am speaking a little bit in ignorance. I don't know what you are talking about.

MR. WENTZEL: I just generalized them.

THE COURT: Fine. I would appreciate your getting as far as you can, stipulating both facts and the admissibility of documents. The facts can be put in by stipulation and the documents can be put into evidence as necessary by stipulation.

Now, if there is any residue of questioning that you have of Mr. Peterman, after you have gone as far as you can with that--and I know the case is moving along pretty fast--but then stick Mr. Peterman back on the stand this afternoon or something like that, but see through the noon hour what is the maximumum you can do by stipulation both on facts and documents. Then, this afternoon, lock, stock and barrel, wind it up. If you have to recall Mr. Peterman, recall him. Is that right?

MR. WENTZEL: That's fine. I will do the redirect and then I will stop, and everything else will be picking up stuff that I have left over.

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MR. NESSEN: Take ten or fifteen minutes to put in.

MR. WENTZEL: Can I bring him back afterwards?

THE COURT: Yes. There are certain things that were covered so far. If you want to have redirect, have redirect, and Mr. Dinkes' cross is deferred.

I wonder where you stand.

MR. McGRATH: I would defer mine.

MR. WENTZEL: I will call Mr. Simon.

MR. NESSEN: I don't really like Mr. Peterman fooling around with that tape recorder in the presence of the jury.

MR. WENTZEL: I told him to stop. He was just trying to set it up in case we needed it.

THE COURT: Let's get it out of sight.

MR. NESSEN: There is no reason, if we are going to have transcripts here.

THE COURT: We have to use transcripts. We are not going to play tapes to refresh recollections. It's just out of the question. Get the tape recorder out of sight.

(In open court.)

MR. DINKES: Your Honor, I will defer my cross-examination.

MR. McGRATH: So will I.

MR. WENTZEL: I am not clear on what point it is being deferred to.

THE COURT: Whenever they wish to call him. He's going to be around during the trial.

MR. WENTZEL: Oh, yes.

THE COURT: I think there is a little bit of redirect of you, Mr. Peterman, so will you resume the stand, please.

SEYMOUR LESTER PETERMAN, resumed.

REDIRECT EXAMINATION

BY MR. WENTZEL:

Q You recall on your cross-examination yesterday, Mr. Nessen asked you whether Mr. Wysinger had solicited fleet subscriptions in the years 1963 and 1964, do you recall that?

A Yes.

Q And do you recall what your answer was?

A Yes. I did not believe that he had.

Q Then Mr. Nessen read to you answers to interrogatories concerning the solicitation of fleet owners which said that the balance of the orders, subscriptions and purchases solicited from fleet owners were solicited on an individual basis by plaintiffs' principals, Abraham

Wysinger and Les Peterman, from time to time. Do you recall that?

A Yes.

Q Is that interrogatory answer correct?

A Yes.

Q Was your testimony yesterday concerning Mr. Wysinger's activities in 1963 and 1964 also correct?

A Yes.

Q Do you see any inconsistencies in --

MR. NESSEN: I object to that, your Honor.

THE COURT: I think you are entitled to bring out something, but I don't think that's the way.

Q In the one case, you said Mr. Wysinger did not solicit subscriptions in those two years, right?

A Yes.

Q And here in these interrogatories answers, it says that he did solicit from time to time.

MR. NESSEN: I object. I think these speak for themselves, your Honor.

THE COURT: No. He is entitled to probe that.

Q Let me ask you: Do you recall what time period referred to in those answers to interrogatories is?

A The interrogatories -- the answer in the interrogatories referred to his soliciting from time to time subscriptions more in the earlier years. In years later, he got much less active.

Q Now yesterday, Mr. Peterman, Mr. Nessen showed you Exhibit Y, the account receivable from Mr. McIntyre and Metropolitan.

Did Metropolitan subscribe to Taxi Weekly?

A Metropolitan paid for some papers that were sent down each week to the Hack Bureau to be given out to newly licensed drivers. Once a week they would be licensed, and these newspapers would be given to them.

Q Do those accounts receivable reflect billings for those copies?

A That's right.

Q And did Metropolitan receive copies for the total amount that was billed?

A Well, the papers themselves went down to the Hack Bureau for that total amount.

Q But there were copies delivered for Metropolitan's account for the full amount of the billing?

A That's right.

Q Did Metropolitan or Mr. McIntyre, on Metropolitan's behalf, ever make any contributions to Taxi Weekly?

A No.

THE COURT: What do you mean? Do you mean aside

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from paying for subscriptions? That's what your question was?

MR. WENTZEL: Or for advertising which was furnished, or copies of papers which were delivered.

THE COURT: Voluntary gift contributions.

MR. WENTZEL: Exactly.

THE COURT: They didn't make any such contributions.

THE WITNESS: No, they did not make any such contributions.

Q Was the Metropolitan subscription cancelled?

A Yes.

Q Do you recall by whom?

A George McIntyre.

Q When did that occur?

A I believe it was in November of '64.

Q Now, Mr. Peterman, do you recall yesterday, Mr. Nessen showed you and introduced into evidence some minutes of the United Taxi Owners Guild, UTOG?

A Yes.

Q And those minutes, as I recall, indicated that UTOG was withdrawing from ITOC?

A Yes.

Q Now, as of the early part of July, 1964, did UTOG

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participate in any way with ITOC on the issue of the fare increase?

A Yes.

MR. WENTZEL: Your Honor, I have marked here as Plaintiffs' Exhibit 8, the minutes of a meeting of ITOC held on July 10, 1964; the minutes of a meeting of ITOC held on July 13, 1964.

THE COURT: The first one was what?

MR. WENTZEL: The first one was a meeting held on July 10, 1964.

THE COURT: Of what group?

MR. WENTZEL: Of ITOC.

THE COURT: All right. The next one?

MR. WENTZEL: The next one is Exhibit 9, which is the minutes of a meeting held July 13, 1964. It is the minutes of ITOC meeting held at the office of Ben Botwinick, 1290 Sixth Avenue.

And Exhibit 10 is the minutes of the executive board meeting of UTOG held July 13, 1964.

I would like to offer these in evidence.

THE COURT: Any objection? That's 8, 9 and 10, is that right?

MR. WENTZEL: Yes.

MR. McGRATH: Can we approach the bench on this,

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your Honor.

THE COURT: Sure.

(At the bench.)

THE COURT: Is there any objection to 8, 9, or 10?

MR. McGRATH: I have an objection on relevancy, your Honor, and materiality.

MR. NESSEN: I have a problem with 8, with the words out. I have never seen 8. I have seen the other two, but I really don't -- it may very well have been produced, but I have never seen it. Maybe Mr. Turchin has, but I haven't. What does it prove? Maybe we can stipulate a fact or two.

MR. WENTZEL: I am offering it for two purposes: Number one, on redirect, to show that UTOG was, in fact, very actively involved both with ITOC and Metropolitan, which was exactly the point that Mr. Nessen was trying to prove the opposite of.

THE COURT: It would seem to me on 8, that it would be relevant to the next to the last paragraph, and the third from the last paragraph.

Now, I don't imagine you are interested in what is marked out anyway.

MR. WENTZEL: Let me see that.

THE COURT: Isn't that what you are focusing on, those two paragraphs that I mentioned?

MR. WENTZEL: Yes; exactly. I want to show that all the defendants were meeting together.

THE COURT: Right. And those two paragraphs will. The minutes will be in as to those two paragraphs and we don't have to worry about that.

MR. McGRATH: So it is in as to Paragraph 1.

THE COURT: The next to the last, the third from the last paragraphs are in, and the introductory language which shows that it is a minute, and specifically exclude at the paragraph that is marked out in the minutes.

Now, on 9, I will overrule the objection of relevancy.

And 10, it is a long minute. What is the point of it?

MR. WENTZEL: 10 is the UTOG meeting held on the same day, July 15, after this meeting. I believe Mr. Baron of UTOG, goes back and reports, and this one is at 11:00 o'clock.

MR. McGRATH: I will withdraw my objection to 10.

MR. NESSEN: I will withdraw mine to 10.

THE COURT: Okay. They will all go in with the provision I mentioned.

(In open court.)

(Plaintiffs' Exhibits 8, 9 and 10 for identification received in evidence.)

xxx

MR. WENTZEL: Your Honor, may I read those portions that we mentioned were relevant here to the jury?

THE COURT: Sure.

(Mr. Wentzel read from the exhibits to the jury.)

MR. McGRATH: Your Honor, for economy, could I now read just one statement?

THE COURT: Sure.

MR. NESSEN: Could I reserve on reading portions?

THE COURT: Anything you want to do on that document is all right.

(Mr. McGrath read from the exhibits to the jury.)

MR. NESSEN: Your Honor, perhaps I should read at this time, if you don't mind.

(Mr. Nessen read from the exhibits to the jury.)

MR. NESSEN: I will reserve on other portions, depending on the cross-examination.

THE COURT: Okay. Anything else of Mr. Peterman?

MR. WENTZEL: Yes, Your Honor.

BY MR. WENTZEL:

Q Mr. Peterman, yesterday Mr. Nessen mentioned to you that concerning the meeting with Mr. Botwinick in April of 1964, that in your deposition in this action, you had not mentioned anything about the dispute between yourself and Mr. Wysinger as having been discussed at that meeting. Did you make a memorandum of that meeting at the time?

A Yes, I did.

Q When was it made?

A The memorandum?

Q Yes.

A It was made right after that meeting.

Q Do you recall whether you had that memorandum with you at your deposition?

A No, I did not.

Q Now, I show you this document which has been marked Plaintiffs' Exhibit 11 for identification and ask you if you can identify it.

A Yes, sir. This is the memorandum I made at the time.

Q Is that your handwriting on that memorandum?

A Yes, it is.

MR. WENTZEL: Your Honor, I would like to offer this in evidence.

THE COURT: What is it? 11?

MR. WENTZEL: Yes, sir.

THE COURT: Is there an objection to the letter?

MR. NESSEN: The other counsel are looking at it, your Honor.

THE COURT: Okay.

MR. McGRATH: Your Honor, I have looked at this memorandum and I will object on the basis that this is a memorandum made by the plaintiff after an alleged conversation. It's self-serving at best.

THE COURT: That doesn't meet the point. There has been an attempt at impeachment and this is a consistent statement.

MR. NESSEN: I have no objection to it.

MR. DINKES: I think, your Honor, that's the very reason why it's not admissable, because it's a prior consistent statement. That's the real reason why it's not admissible. He can't bolster his own testimony with something he wrote himself.

THE COURT: All right. I will overrule the objection. If that's the only objection, I will overrule it. Okay.

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MR. NESSEN: I'm not sure we have a foundation in time, but that's all right, your Honor.

THE COURT: Okay. Do you have anything else?

Exhibit 11 is received.

(Plaintiffs' Exhibit 11 for identification received in evidence.)

x

MR. WENTZEL: Your Honor, I would just like to read one sentence from Exhibit 11, which is the next to the last line in this handwritten notation.

(Mr. Wentzel read from exhibit to the jury.)

BY MR. WENTZEL:

Q Mr. Peterman, was BB Mr. Botwinick?

A Yes.

Q And the other initials are those of Mr. Wysinger himself?

A Yes.

MR. WENTZEL: I would also like to state that this document was listed.

THE COURT: All right. It's in evidence.

MR. NESSEN: Yes. Let's not have any statements by counsel.

THE COURT: Anything else?

Q Mr. Nessen asked you about a meeting with Mr. McIntyre in the spring of 1964. Subsequent to that meeting, Mr. Peterman, did Taxi Weekly continue to print the met side of the fare increase?

A Yes.

MR. NESSEN: I object. I think these things speak for themselves.

THE COURT: Overruled.

Q Did Taxi Weekly continue to support the fare increase?

A Yes, it did.

Q Mr. Nessen introduced in evidence a full page ad which ran in Taxi Weekly on July 27, 1964. How was that copy received by Taxi Weekly?

A It was received from the office of George McIntyre.

Q Was it submitted as a story?

A No. It was an advertisement, the same as generally appeared in the daily papers.

Q Did you review the contents of that ad?

A I may have looked at it before it went in the paper.

Q Did you review the contents of the ad that was introduced as an exhibit, yesterday?

A Yes, I did.

Q Had the contents of that ad previously been

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covered in any Taxi Weekly stories?

A Yes. It definitely had been covered, particularly in the report of the city council hearing that occurred on June 4. The main points that were in that ad were covered in the story in relating the testimony of Henry Friedlander, who was the counsel to Metropolitan Taxi's board of trade.

Q Mr. Nessen asked you about a letter which you received from Mr. Wysinger's attorney, offering $30,000 for your stock. What was your response to that letter?

A Upon my instructions, my attorney sent a letter to his attorney saying, "I assume that your stock is for sale at the same price."

The response to that was completely negative.

Q Now, you also mentioned, in response to a question by Mr. Nessen, that in 1953, Mr. Wysinger had taken a position in favor of the jumbo cab, is that correct?

A Yes.

Q Have you located that article?

A Yes, I have.

MR. WENTZEL: Your Honor, I have marked as Exhibit 13 a bound volume of Taxi Weekly for the year 1953.

We have Exhibit 12 on another document that I will get to in a moment.

THE COURT: We have what on another document?

MR. WENTZEL: I skipped Exhibit 12.

THE COURT: Oh, I'm sorry. You are only interested in the one article in the bound volume.

MR. WENTZEL: Yes.

THE COURT: If you want to offer that, just offer that one article.

MR. WENTZEL: I can't identify the article.

THE COURT: All right, Mr. Peterman, can you identify the article so we can get that stapled or identified?

THE WITNESS: Yes.

Q What issue does it appear in?

A It's the Wednesday, August 12th, 1953 issue, and it covers the upper part of the front page.

THE COURT: All right, let's have that page marked as Plaintiffs' Exhibit 13 for identification.

MR. DINKES: Your Honor, if Mr. Peterman wasn't associated with Taxi Weekly until 1956 --

THE COURT: Please, it hasn't even been offered as yet.

(Plaintiffs' Exhibit 13 marked for identification.)

xxx

MR. WENTZEL: Your Honor, I will like to offer Exhibit 13 in evidence.

THE COURT: I take it there is an objection.

MR. DINKES: I don't understand Mr. Peterman --

THE COURT: Do you object?

MR. DINKES: Yes.

THE COURT: All right. I will overrule the objection.

MR. NESSEN: Your Honor, I haven't seen it. May I look at it before it's received in evidence?

THE COURT: Yes.

I will receive it subject to a motion to strike.

Let's go on.

(Plaintiffs' Exhibit 13 for identification received in evidence.) cx

THE COURT: Let's pick it up, Mr. Wentzel, please.

Q Mr. Peterman, yesterday, in your cross-examination, there was some discussion about the types of advertising directed to drivers as opposed to owners of taxi cabs; do you recall that?

A Yes, I do.

Q Could you give us some examples of the kinds of ads that were directed to drivers as opposed to owners of taxi cabs?

THE COURT: What kind of drivers? Owner-drivers, fleet drivers?

THE WITNESS: Both kinds. As long as they were driving a cab and in contact with passengers. The purpose of the advertising was to --

THE COURT: I told the jury about that in the stipulation. Hotels, that kind of thing.

THE WITNESS: Hotels, airlines, shows.

THE COURT: All right.

THE WITNESS: Demonstrations, newspapers.

THE COURT: All right. Go ahead.

Q Had there been any change in the amount of that advertising in the years prior to 1964?

A (No response.)

Q Including 1964.

A Yes, there was a change because I specifically worked on that aspect of the advertising because I felt that was the biggest market.

MR. NESSEN: I object. That's not responsive.

THE COURT: Overruled.

Let's go on.

A It was the biggest market that we could develop because it had hundreds of millions of dollars of potential expenditures by people who ride in cabs, some of whom may rely on the advice of the cabby, especially if they were from out of town.

In the fiscal year ending March '63, we carried $10,033.20 of that type of advertising.

In the fiscal year ended 3/64, we carried $12,680.42 of that type of advertising, an increase of 26 percent.

In the first quarter of fiscal year '64, that is April, May and June of 1963, we carried $2,439 worth of that advertising.

In the first year -- the first quarter of fiscal year ending '64, that is April, May and June of 1964, we carried $3,663 worth of that advertising, an increase of 50 percent, 5-0 percent.

MR. NESSEN: Your Honor, what type of advertising is that?

THE COURT: These are small amounts. Let's go on to something else, Mr. Wentzel.

Q Mr. Peterman, I have had marked as Exhibit 12A --

MR. NESSEN: Could the document that the witness just read from, your Honor, be marked for identification?

THE WITNESS: That's it.

MR. NESSEN: Is this it?

MR. WENTZEL: I would just like to offer it in evidence as a summary of what the witness just stated.

MR. NESSEN: We object.

THE COURT: I sustain the objection. That's Exhibit 12, is it?

MR. NESSEN: Yes, it's 12 for identification.

THE COURT: Okay.

Go ahead Mr. Wentzel.

MR. WENTZEL: Your Honor, that's all I have at this time in the nature of redirect. I would like to reserve the right to recall Mr. Peterman for the other miscellaneous matters which I mentioned.

MR. NESSEN: Your Honor, could I have a moment of recross?

THE COURT: Yes.

RECROSS-EXAMINATION

BY MR. NESSEN:

Q Mr. Peterman, you just went through a list of advertising that was directed to drivers, do you recall that?

A Drivers and owner-drivers.

Q And owner-drivers?

A Yes.

Q Speaking about hotels, restaurants, airlines, shows, and so forth?

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A Yes.

Q And you gave percentages?

A That's right.

Q Now, just to understand, fleet owners hire drivers, don't they, or didn't they?

A Yes.

Q And fleet owners, sir, sometimes had two shifts and sometimes even three shifts, is that correct?

A Yes.

Q So that there were more drivers per vehicle for a fleet owner than there was for a single cab?

A Yes.

Q And that's where most of the drivers were in the industry, with the fleet owners? Is that correct?

A That's right.

Q And the fleet owners, you say, not only bought bulk subscriptions but Metropolitan actually bought a bulk subscription which it distributed free at the Hack Bureau, is that correct?

A That's right; yes, sir.

Q And those were about 40, weren't they, 40 papers?

A I don't recall the quantity just now.

Q Wasn't it 30 up to 40?

A Well, if the sheet is handy, that sheet that

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have that big wonderful cab, the DeSoto, do you remember that back in 1950?

A Do I remember it?

Q Yes.

A I vaguely remember it as a passenger car, but not connected with the cab industry.

Q Wasn't Mr. Wysinger talking about: wouldn't it be nice to keep those big jumbo DeSotos on the road?

A He was talking about retaining the monopoly for only jumbo cabs and not allowing stock cabs to come in, which the fleet owners wanted.

Q They wanted them in 1953?

A Mr. Botwinick and Mr. Friedlander testified in favor of the stock, having the law changed so that the stock car could be used as cabs.

Q When was that, sir?

A That was at the end of '53.

Q And do you know whether Mr. Wysinger then changed his position?

A I have no knowledge of it, except that he always told me in the office --

Q No, I didn't ask you what he told you in the office; I asked you about in the newspaper.

A I looked through that last night. I saw no indication whatsoever of any change in position by Mr. Wysinger.

Q And wasn't there a time when Taxi Weekly was in favor of the option of stock and the big one to give the driver the option and the fleet owners the option to take either one? Wasn't that the position of Taxi Weekly?

A I saw no indication of that, and I looked through the issues up to the time that the law passed.

THE COURT: Did Mr. Wysinger or Taxi Weekly ever advocate the jumbo cab at any time after that article in 1953, as far as you can tell?

A I'm not aware of what is --

THE COURT: Please, can you just answer my question? You apparently looked through the paper to see about what position it took on jumbo cabs. You did that last night, right?

THE WITNESS: Yes.

THE COURT: What did you find? Did you find any advocacy of jumbo cabs after the 1953 article? Yes or no.

THE WITNESS: No.

THE COURT: Okay. That's that.

Q Mr. Peterman, in your note in your meeting of Mr. Botwinick, there is no mention there, is there, of a dispute which you were surprised at. It just says "Grapevine, eye-to-eye." Do you recall that? There is nothing that records your reaction.

A I didn't have to record my reaction because I certainly knew it.

Q It doesn't say what you said to him, does it? It just says that: "Grapevine, eye-to-eye.

THE COURT: It says what it says. It's in evidence.

MR. NESSEN: Right.

Q In your interrogatory, can we accept the fact that no mention is made in that interrogatory of Abraham Wysinger and Les Peterman made these solicitations before 1961, before 1962, or before 1963? It's just a blanket statement, isn't it?

THE COURT: Again, it says what it says. You can read it to the jury. There is no qualification stated. You can argue on that basis.

MR. NESSEN: All right, I think I did read it once before.

THE COURT: You can read it again on your summation.

MR. NESSEN: I will.

Thank you. I have no further questions.

THE COURT: Okay, Mr. Peterman. You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. WENTZEL: Mr. Sailler.

FRANK W. SAILLER, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Sailler, what is your occupation?

A I work for Future Motors and Recon Car Corporation at the present time. I am Director of Fleet Sales and Leasing.

THE COURT: Was there a Future Motors and was there a second company?

THE WITNESS: Recon Car Corporation.

THE COURT: Spelled R-e-c-o-n?

THE WITNESS: Yes.

THE COURT: Okay. Go ahead.

Q What is the business of that company?

A Which? Future or Recon?

Q I'm sorry, did you say there were two companies?

A Yes.

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Q Oh, I thought it was one name. My apologies.
Is Future Motors an automobile dealership?

A Yes, it is.

Q What is the business of Recon Car Corporation?

A Well, we service major fleets like Avis, National Car Rental. We do the servicing for them. And we manufacturer small, 15 passenger buses on a Dodge chassis.

Q What position do you hold with Future Motors?

A Director of Fleet Sales and Leasing.

Q How long have you been employed by Future Motors?

A Oh, pretty near two years.

Q By whom are you employed during the period 1964 to 1966?

A Chrysler Leasing Corporation.

Q Does Chrysler Leasing Corporation have any connection with Chrysler Motors, the automobile manufacturer in Detroit?

A A subsidiary.

Q How long were you employed -- for what period of time were you employed by Chrysler?

A Since 1946.

Q Until when?

A Until about two years ago, at which time I was laid off-

Q What position did you hold with Chrysler during the years 1964 through '66?

A Fleet Sales Representative.

Q What were your responsibilities in that position?

A To promote the sale of Chrysler Corporation products.

Q Did that include anything other than automobiles?

A Trucks, as well. The complete line.

Q Were you assigned to any geographic area?

A During what periods? I have had many areas. I handled the entire East Coast at one time.

Q At the beginning of 1964, what was your territory?

A (No response.)

Q Do you recall that?

A New York, New Jersey, Connecticut, the lower part of Connecticut.

Q Did that change at all during the period through the end of 1966?

A No.

Q Where was your office at that time?

A Well, that's another thing. We moved around a lot. I would guess that would have been in the Chrysler Building.

Q What was your chain of responsibility within the Chrysler organization?

First let me ask you: Were there any persons within the organization reporting to you?

A No, I was the lowest man on the totem pole.

Q Did you have direct dealings with purchasers of automobiles?

A Would you restate that? Would you clarify that?

Q Well, you were Fleet Sales Representative?

A Right.

Q Did you concentrate on selling to various types of fleets?

A Yes. We didn't sell direct. Everything had to go through a dealer. Our main purpose was to promote the sale of Chrysler products. We at no time sold direct to a customer.

Q Did you call on prospective purchasers?

A Yes, I did.

Q Did you call on existing customers?

A Yes.

Q Now, who was your superior?

A Well, I had two at that time: The first one would be Norm Williams; and the fellow that replaced him was Herb Ferris. They were regional managers.

Q Did Mr. Ferris replace Mr. Williams sometime in this period between '64 and '66?

A Yes.

Q And they held the same position of regional manager?

A Right.

Q Where was the regional manager's office?

A The same location that I was at. During that period, we were in the Pan Am Building. We were in White Plains. And then, finally, we went up to Tappan, New York.

Q Was the regional manager always located in the same office that you were in?

A Right.

Q Did the regional manager call on prospective customers?

A What particular type customer are you referring to?

Q Well, let's talk about the taxicab fleet owners. Did you have any taxicab fleet owners as customers during this period of time?

A They didn't -- the regional manager didn't make a practice of calling on taxicab fleets.

Q Did you, yourself?

A Yes.

Q Did anyone else from Chrysler?

A We have service people also that contacted them.

Q For what purpose?

A To see that the cars properly were supported by Chrysler Corporation under its warranty policies.

Q Did anyone else from Chrysler contact the fleets with respect to sales, the selling of cars?

A Dealers.

Q Dealers?

A All cars had to be sold through a dealer. My job was to promote the automobile and the support that Chrysler Corporation would put forth after they bought the automobile.

Q Your job then was to sell them on the Chrysler product?

THE COURT: I think we have got this. Can we get to the facts that we are worried about, quickly.

Q Now, can you recall the names of any of the taxicab fleet owners who were your customers back in 1964, '65 and '66?

A We had many. I couldn't name them all.

Q Do you recall Leon Murstein?

A Yes, I do.

Q Was he a taxicab fleet owner?

A Yes, he was.

Q Was he a customer?

A Yes, he was.

Q Do you recall Gerald Naren?

A Who?

Q Gerald Naren, N-a-r-e-n?

A Yes. He was an on-and-off-again customer.

Q Do you recall Nathan Levine?

A Yes, I do.

Q Was he a customer?

A In what years are you speaking about now?

Q 1964, 1965 and 1966.

A The exact years I couldn't tell you. He's been a customer of Chrysler Corporation for some time. He has used Chrysler Corporation products.

Q What part of your business was devoted to taxi fleet sales as opposed to non-taxi sales?

A I would probably say 60 percent of my time.

Q Was devoted to taxi fleet sales?

A Right.

Q Can you recall any other, the names of any other taxicab fleet owners who were customers of yours?

A They all must be in these transcripts that we have had.

Q Can you recall any today, sir?

A Well, I don't handle them any more. I will be honest about it.

THE COURT: Okay.

Q Was it your practice to keep your superior informed as to the activities which were going on within the taxicab industry during this period of time?

A We would -- I would report the sales.

Q Did you have a regular reporting function?

A Right.

Q How often was that?

A Once a month.

Q Did you see your superior, the regional manager, more frequently than that?

A I would see them every week. We were in the same office.

Q Was it your practice to pass along to your superiors any complaints which you received from customers?

A Not really. The Service Department -- I was more in contact with them about various service problems that would come up.

Q Did you pass along information and activities in the taxicab industry, such as what was happening with respect to fare increases, and that sort of thing?

A That really didn't have a lot to do with selling cars.

Q Did you ever receive suggestions from taxicab fleet owners concerning the vehicle which you were selling?

A At various times I did; the same as you would receive from a commercial account. Everybody is an engineer in their own right.

Q Did you pass this information along to your superior?

A Generally, not. If it was something worthy, I would give it to the Service Department.

Q During the period 1964 through 1966, were you familiar with a newspaper called "Taxi Weekly"?

A Yes, I was.

Q Did you know Les Peterman, who is sitting here, at that time?

A Yes.

Q How did you come in contact with Mr. Peterman?

A At various social functions, or at car showings, or cocktail parties.

Q These were functions attended by members of the taxi industry?

A Yes.

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Q Did you know that Chrysler advertised in Taxi Weekly during that time?

A Yes.

Q To whom was that advertising addressed? Who were you trying to sell in advertising in Taxi Weekly?

A It was really a PR type thing. I don't know if it was ever responsible for selling one car or one thousand, but it was a PR type thing. It was institutional advertising.

Q Did there come a time when you learned that that advertising was discontinued?

A Yes.

Q Did you ever have any discussions with any of your fleet-owner customers concerning Taxi Weekly?

A Not specifically the paper; the operator or the owner of the paper.

Q Referring to Mr. Peterman?

A Yes.

Q With whom did you have discussions about Mr. Peterman?

MR. DINKES: Can we find out when the discussions took place?

THE COURT: Of course. Let's let the questioning go on without interruption, please.

A With various people at various functions.

Q Can you identify any of them?

A I don't know. I had a chat with Murstein one day.

Q Do you recall when that was?

A Specific dates -- you know, this case is so old that to go back and give you specific dates is impossible for me.

Q Was it during the period of time when Chrysler was still advertising in Taxi Weekly?

A I don't recall.

Q Do you recall where it took place?

A I suppose it was at a taxicab function.

Q Did you used to see Mr. Murstein fairly frequently at such functions?

A Yes, and I would call on him as I did other customers.

Q Do you recall what Mr. Murstein said about Mr. Peterman or about Taxi Weekly?

THE COURT: What was said on the subject? What was said in this discussion that you are talking about?

THE WITNESS: Well, apparently they felt that Peterman was supporting the Checker taxicab, and, of course, they had become a little unhappy with that.

Q That made you unhappy, sir?

A I didn't say it made me unhappy.

Q I'm sorry. I didn't hear you, that's all.

A No. I said Murstein, when he felt that Peterman was supporting the Checker taxicab, he was unhappy because nobody wanted anybody to have a monopoly on the cab business in New York.

Q Do you recall anything else Mr. Murstein said to you?

A No. That would be basically it.

Q Do you recall whether he told you what evidence he had that Checker was backing Peterman?

A No.

Q Did you pass that information on to any of your superiors?

A No.

Q Do you recall that?

A What?

Q Do you recall not doing so?

THE COURT: He said "No." It doesn't make any difference, anyway. Get to the substance of the conversation and then get on to the next witness.

Q Do you recall any conversations with any other fleet-owner customers about either Mr. Peterman or Taxi

Weekly?

A I would say I probably had conversations with other people as to who they were at this time. I don't recall specifically, but there were additional comments.

Q Do you recall any of those comments?

A They were all basically the same.

Q Referring to Checker, you mean?

A Right.

Q Do you recall any discussion with Mr. Naren?

A I could have possibly had a discussion with him also; but specific discussions, I don't recall.

THE COURT: Let's not have -- you are doing your best, but if it's just a possibility, we can't really use that. Anything you remember?

THE WITNESS: Your Honor, this is so long ago that it's -- my memory is not that good.

THE COURT: Okay.

Anything else, Mr. Wentzel?

Q Do you recall any discussions with Mr. Nathan Levine?

A No.

Q Do you recall any of your fleet-owner customers complaining about Chrysler continuing to advertise in Taxi Weekly?

A I had nothing to do with advertising at all.

Q That wasn't my question, sir.

MR. NESSEN: I think the answer was no.

THE COURT: Let's hear it.

(Record read.)

A Not to me.

Q You don't recall that?

A Not to me.

Q Do you recall giving a deposition in this action?

A I think I have given a few of them.

Q On January 13, 1969?

A Could well be the proper date.

Q Mr. Geller's office?

A (No response.)

Q Let me ask you if you gave the following answers to the following questions, starting at page 26:

"Q Did any of them speak to you on the subject of discontinuing advertising in Taxi Weekly?

"A At various functions, in talking to people, they would bring up conversation.

"Q And what would they say?

"A About the paper, about Les Peterman, and so forth; but at no time did anybody demand.

"Q You used the words 'and so forth,' and I am at a disadvantage. I should like to know what 'and so forth' means? What did they say about Les Peterman in Taxi Weekly at that time?

"A Everybody had different complaints in regard to our advertising and the paper."

Q Do you recall giving that testimony, sir?

A To our advertising?

Q Do you want me to read the answer again?

A May I see that?

Q Yes, certainly.

MR. NESSEN: Your Honor, I would like to think that he is reading --

THE COURT: Well, let's just let the witness look at the transcript and see where we go from there.

(Pause.)

THE COURT: Look at as much as you want, Mr. Sailler.

A Well, I would guess this would be a fact.

Q The persons you were referring to there were fleet-owner customers of yours, is that correct?

A Pardon me?

Q The people that you were referring to in that answer were fleet-owner customers of yours, were they not?

A There was no customer that was actually mine.

They are dealer customers.

Q I understand.

A They are Chrysler Corporation operators, you see?

Q Those were the people that you were referring to in that answer?

A Right.

Q Now, I would like to draw your attention to a second session of your deposition, which was held on November 5, 1969.

A Was that in this book, too?

Q No. We have it right here, sir.

THE COURT: What was the date?

MR. WENTZEL: November 5, 1969.

A What page?

Q Starting on page 112. Now, sir, at page 112 it states:

"Q Does that refresh your recollection that you told Mr. Peterman that the Narens were in the forefront of talking to you as a representative of Chrysler about Mr. Peterman and Taxi Weekly?

"A I have had conversations with them.

"Q With the Narens?

"A Concerning Peterman, right.

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"Q What was said in those conversations?

"A They were unhappy; that's all.

"Q And they told you that they were unhappy about Peterman?

"A Yes; that's right."

Q Does that refresh your recollection at all concerning the Narens?

A Yes.

Q Can you recall anything -- was this testimony correct?

A I would say yes.

Q Do you recall anything else about any discussions with the Narens concerning Peterman or Taxi Weekly?

A At this time, no.

Q No?

A No.

Q Continuing at the very bottom of page 112 of your deposition:

"Q Does that refresh your recollection that you told Mr. Peterman that the Levines had been putting pressure on you against Peterman?

"A There has never been anybody put pressure on me, but in my daily work; and you go around and one guy will talk about the stock market; another guy will talk about the mayor; another guy is talking about the Hack Bureau; another guy could be criticizing his paper; but as far as pressure, I didn't have any pressure.

"Q Well, did the Levines specifically talk about Peterman and Taxi Weekly?

"A In offhand conversation, yes.

"Q What did they say when they talked to you about Peterman and Taxi Weekly?

"A They were unhappy with his paper.

"Q Did they say anything more than that?

"A In the many conversations I had -- of course I don't go there to listen about his paper. I go there to sell them a product; but in general conversation, that came up.

"Q They were aware that you were there there to sell them a product?

"A Right; that's why I go."

Q Do you recall that testimony, sir?

A Yes. I will buy that.

Q That testimony is correct?

MR. DINKES: If your Honor please, again I would like to find out when he is talking about. When were these conversations?

THE COURT: You can cross.

MR. NESSEN: Your Honor, I think this testimony ought to remain in, myself.

THE COURT: Of course. There is nothing wrong with this.

Anything else, Mr. Wentzel?

Q Do you recall suggesting to Mr. Peterman that he should go see Mr. Murstein?

A I do.

Q Why did you suggest that to him?

A I thought that might assist him.

Q Why was that, sir?

THE COURT: I do think now that I agree with Mr. -- I think we better -- there may be a different phase. Can't we do a little better to fix the time?

THE WITNESS: Your Honor, this is so long ago.

THE COURT: Just a minute. I am addressing that to the lawyer.

Q Mr. Sailler, do you recall an occasion when Mr. Peterman came to your office and discussed with you --

THE COURT: Just, do you recall an occasion when he came to your office?

A Right.

Q Do you recall when that was?

A I believe I was still in the Pan Am Building at that time.

Q Were you in the Pan Am Building in December of 1965?

A I would say yes.

Q Do you recall whether when you talked to Mr. Peterman, Chrysler had discontinued its advertising in Taxi Weekly?

A No, I don't recall that.

Q Do you recall what your discussion with Mr. Peterman was about? I am not asking you to give it now; I just ask you if you recall the subject matter of that discussion.

A I would say part of it.

Q Did it have anything to do with Chrysler's advertising in Taxi Weekly?

A I don't remember, really, to be honest about it.

Q What was the subject of the conversation, that you do remember?

A Well, as I recall it, he came up there and he wanted some advice, or some help, or something of that type. I mean, it was that type of conversation.

Q Was this the conversation in which you mentioned Mr. Murstein?

A I believe that was the conversation.

Q Did you also mention Mr. Levine and Mr. Naren?

THE COURT: What is this? This is December '65, if it happened then. You know, it's pretty late in the game.

MR. WENTZEL: Just after Chrysler discontinued its advertising.

THE COURT: That isn't in evidence yet. He doesn't even remember that. I can't -- if there is something specific that relates to the alleged conspiracy in 1964, you can bring that out, but just general conversation is not going to help the jury. Let's focus it, please.

MR. WENTZEL: I am trying to establish this.

Q Mr. Sailler, I want to know whether the discussions that you had with Mr. Murstein, Mr.Naren and Mr. Levine, that you testified about, occurred prior to this meeting that you had with Mr. Peterman.

A It's a difficult thing for me. I would say I probably had the conversation with Murstein before this time or I wouldn't have recommended that he talk to him.

Q Do you recall at your deposition in November, 1969 that a tape recording was played?

THE COURT: Mr. Wentzel, if you have got a transcript of anything, you can show it to him to refresh his memory on a specific point. Show it to him and get it over with. You don't have to just stand around.

Q I would like to show you what we have prepared as a transcript of a conversation.

THE COURT: Don't describe it. Just show him the document and point to the language and say: Does this refresh your recollection?

Q Let me show you this language in this transcript and I ask you whether you recall this conversation with Mr. Peterman?

A I heard that recording and I couldn't even tell if it was my voice. I couldn't even tell if it was my voice.

THE COURT: Ladies and gentlemen of the jury, just so there is no mystery, the thing, there have been references to situations where apparently Mr. Peterman recorded conversations he had with people. You heard about that in the opening statements.

Now, I have ruled that at least as of now, those conversations as evidence are not relevant and are not coming in, but to the extent that a document may refresh somebody's recollection as to a relevant event, they can be used; but I don't want the jury to speculate as to the circumstances of taking those recordings one way or the other for or against any party, but I just want to try to keep that issue out of the case as far as any speculation as to those circumstances, so I would like to avoid counsel, to the extent they can, or anybody, referring to recordings. If you want to have a document marked and say, "I show you this document and does this refresh your recollection," you can do that, and that's the extent of it, and let's try not to get into the subject of those recordings. Okay.

If you are going to show him something to refresh his recollection, you better get it marked for identification.

(Plaintiffs' Exhibit 14 marked for identification.) cx

Q Mr. Sailler, let me show you Plaintiffs' Exhibit 14 for identification, and I ask you whether it refreshes your recollection as to the conversations you had with the Narens and the Levines about Mr. Peterman, about Taxi Weekly. I refer you to page 7, sir.

A I recall him coming up to my office.

THE COURT: You recall him, meaning whom?

THE WITNESS: Peterman.

THE COURT: The question is: Does that document refresh your memory in any way as to conversations with the Levines or the Narens? Is there anything in that document that awakens a recollection of anything that you didn't tell us earlier? That's the question.

THE WITNESS: Your Honor, this is so long ago.

THE COURT: All right, it doesn't. Is that the answer?

THE WITNESS: It doesn't.

THE COURT: Then that's that.

Q The next question is, Mr. Sailler: Does it refresh your recollection that the conversations you had with the Narens and the Levines and Mr. Murstein occurred prior to this meeting with Mr. Peterman?

MR. DINKES: I object to reference to the Levines. I represent Nathan Levine. I don't represent the Levines and I don't see what relevance it has.

THE COURT: Well, let's make it Nathan Levine, then.

MR. DINKES: I would like him to establish whether there were any conversations with Nathan Levine rather than the Levines.

MR. WENTZEL: I believe I did.

MR. NESSEN: I don't think it matters one way or another. I think this conversation is much too vague and I move to strike. Well, let it stand.

THE COURT: Well, you are probably a little confused about what the question is.

First of all, you mentioned earlier in your deposition something about the Levines. Now, can you remember the first name of either of those Levines?

THE WITNESS: Well, Sidney Levine was my primary contact.

THE COURT: All right. Sidney Levine.

THE WITNESS: Right.

THE COURT: Now, when you say "primary contact," what do you mean?

THE WITNESS: I would see them both when I would go up there.

THE COURT: Who was the other one?

THE WITNESS: Nat Levine was the other one; and Sidney Levine was responsible for the shop and the operation, and so forth.

THE COURT: I think, then, the next question, if I am right, Mr. Wentzel, is: Does that document -- I think you understand the question -- Does that document refresh your memory as to whether the conversations with the Levines and the Narens occurred before Mr. Peterman came to see you?

THE WITNESS: I can't --

THE COURT: The answer is no.

THE WITNESS: No.

THE COURT: All right. That's that.

Anything else, Mr. Wentzel?

BY MR. WENTZEL:

Q Now, you do recall that you suggested to Mr. Peterman that he go see Mr. Murstein?

A Right.

Q Now, had you had a discussion with Mr. Murstein about Taxi Weekly or Mr. Peterman, prior to that meeting with Mr. Peterman?

A Right.

Q Can you recall or can you place the time at all as to how much prior to the meeting it was?

A No. These people I would contact all the time and I would see them from time to time, and to make dates -- it's impossible for me.

THE COURT: Okay. Can we get along?

MR. WENTZEL: I have no further questions.

THE COURT: All right. Any cross?

MR. NESSEN: Yes, your Honor.

CROSS-EXAMINATION

BY MR. NESSEN:

Q Let me read a question and answer that wasn't read. This is the deposition of yours on January 13, 1969. The question is on page 24:

"Q No taxi-fleet owner who was a customer of yours ever came to you at any time -- I will put it now -- and ask you or demand of you or suggested your company -- I again refer to Dodge or Plymouth Division--discontinue advertising in Taxi Weekly?

"A There was no customer who demanded that we remove any advertising.

"Q That may answer a part of my question, but I didn't know whether you were emphasizing 'demanded.' Did any of them speak to you on the subject of discontinuing advertising in Taxi Weekly?"

And then it goes on to what Mr. Wentzel read.

THE COURT: How are we left, then?

MR. NESSEN: It goes on, your Honor, with Mr. Wentzel reading on direct examination:"At various functions in talking to people, they would bring up conversation, and what did they say?

"A About the paper, about Les Peterman, and so forth.

"Q But at no time did anybody demand?"

Now, sir, my question to you is: Do you remember anyone, any customer of yours, suggesting to you that

Chrysler or Plymouth not advertise in Taxi Weekly?

A No, I don't.

Q And you weren't -- you didn't have anything to do with advertising, isn't that correct?

A This is what I can't figure out. I had nothing to do with it at all, with advertising.

Q And, in fact, do you recall telling Mr. Peterman, in this conversation, that you weren't, that Dodge and Plymouth weren't advertising with anyone at this time? Do you remember that?

A As I recall, when we had that conversation, they were cutting back on advertising all over the place.

Q And you told that to Mr. Peterman, didn't you?

A Yes, I did.

Q You didn't know he was recording your conversation, did you?

A No.

THE COURT: I am trying to keep that out. Now, what's fair for one is fair for all.

MR. HESSEN: I withdraw that.

THE COURT: Okay.

Q You don't really remember any specific conversations with Mr. Murstein, do you, about Taxi Weekly?

A (No response.)

Q Any specific conversation.

A Specific dates and so forth, I don't have.

Q And do you recall testifying under examination in this case where you said, and I quote, "There has never been anybody put pressure on me." Do you recall that?

A Yes, I think that's in one of them.

THE COURT: That's just read.

Q Now, the fact of the matter is that if you would, that the reason -- if you look at the bottom of page 6 here, wasn't the reason you suggested that Mr. Peterman, who had come to you asking for help, that's what he said, isn't that so?

A That's right.

Q And that he was coming to ask for help. And wasn't it a fact that you suggested he go see Leon Murstein because he is a charitable person?

Look at the bottom of page 6.

A That's a fact; a very nice individual.

THE COURT: Anything else?

MR. NESSEN: No. That's all.

THE COURT: Any other cross?

MR. DINKES: Just a few questions.

CROSS-EXAMINATION

BY MR. DINKES:

Q Mr. Sailler, I believe you told us that-- I believe you told the Judge, in answer to his question, that your contact over at the Levines was with Sidney Levine?

A Yes

Q Let me ask you this: When you say, "the Levines," "the Narens," was that the sort of way the taxi industry did business, according to who the owner was?

A Yes.

Q There were the Ackermans, the Levines, the Narens. Is that the way they referred to themselves, generally?

A It was probably my own fault. That's the way I referred to them.

Q And that was sort of common in the industry, wasn't it?

A That's right.

Q By the way, these people that you would see, when you would go to see the Narens, you wouldn't necessarily see both of them, would you?

A Whoever was there.

Q And you haven't had any recollection at all of discussing anything concerning this case with Nathan Levine?

A I stated before, specific conversations, I don't recall.

MR. DINKES: No further questions.

MR. McGRATH: No questions, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

THE REPORTER: Your Honor, I must have a recess at this time.

THE COURT: Oh, yes, we need to take a break.

(Recess.)

MR. WENTZEL: Mr. Moore, please.

GLENN MOORE, JR., called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Moore, you are appearing here today under subpoena?

A Yes, sir.

Q What is your occupation?

A I own and manage Keystone Taximeter Service.

Q I didn't get the name of that,

A Keystone Taximeter Service.

Q In what business is that company engaged?

A Servicing and selling taximeters.

Q Does that company also manufacturer taximeters?

A Not at this time, sir.

Q How long have you been employed by that company?

A Three months.

Q Prior to that time, by whom were you employed?

A Rockwell International.

Q Where is Rockwell Manufacturing located?

A It was located in Hopewell, New Jersey.

Q Is that the headquarters office?

A The headquarters is in Pittsburgh, Pennsylvania.

Q What was in Hopewell?

A Divisional headquarters.

Q What was your job with Rockwell?

A Branch manager of their New York City office.

Q Where was that located?

A It was 42-61 Hunter Street, Long Island City.

Q Did you hold that position during the years 1964 to '66?

A Yes, I did.

Q For what period of time did you hold that position? When did you start?

A 1959 until March 31st of this year.

THE COURT: I guess I am not clear. You were manager of -- what exactly were you in?

THE WITNESS: Branch manager, your Honor, of the Rockwell Manufacturing.

THE COURT: What branch?

THE WITNESS: Taximeter Division.

THE COURT: For what area?

THE WITNESS: New York City.

THE COURT: New York City. Okay.

Q What were your duties as the branch manager for Rockwell, New York City?

A I was a working manager, selling and servicing taximeters.

Q To whom did you sell taximeters?

A Fleets and individual owner-drivers.

Q You made a reference to Hopewell, New Jersey. What was located there?

A That's where the meter was manufactured, sir.

Q To whom did you report within the organization?

A At that time, Mr. Ulrich.

Q Ulrich?

A Yes, sir.

Q What is his first name?

A Ralph.

Q What was his position?

A He was sales manager.

Q Pardon me?

A Sales manager.

Q Where was he located?

A In Hopewell, New Jersey.

Q In the course of your duties, did you come in contact with fleet owners in New York City?

A Yes, sir.

Q Did anyone else from Rockwell have contact with fleet owners in New York City?

A Mr. Ulrich.

Q What were the indications for Mr. Ulrich to have contact with fleet owners?

A Mostly at conventions.

Q Did Mr. Ulrich call on the fleet owners on a day-to-day basis at all?

A No, sir.

Q Was your function to do the selling to the fleet owners?

A Basically mine was to service their meters.

Q Who was it that did the selling to the fleet owners?

A When we had a prospect, I would call Mr. Ulrich in.

Q Would he call on the fleet owners, then?

A From time to time; yes, sir.

Q Would you go with him?

A If he deemed so; yes.

Q During the years 1964 and 1965, did you have any fleet-owner customers?

A A few.

Q Do you recall how many?

A No, sir, I don't.

Q Do you recall who they were?

A Name-wise?

Q Yes.

A A few of them, sir.

Q Can you identify them?

A Mr. Katz, Mr. Lefkowitz, Mr. Kelly -- there were three Kellys at that time.

Q You mentioned Mr. Lefkowitz.

A Yes, sir.

Q What was his first name?

A There were three Mr. Lefkowitzes: There was John, the brother; Morris; and I think, Louis. I am not sure about the son's name.

Q Morris was the father?

A Yes, sir.

Q Was he the one you dealt with most closely?

A He would come in and pick up the meters; yes, sir.

Q Where did he live?

A I think Jackson Heights; I'm not sure.

Q Was it close to where your operation was?

A Yes, sir.

Q During 1964 and 1965, were you familiar with Taxi Weekly?

A Yes, sir.

Q Did you get a copy of it each week?

A I believe we did.

Q Did you know Mr. Peterman?

A I met Mr. Peterman the first time at a convention. I think it was the first convention they had in New York City.

Q Do you recall what year that was?

A No, sir, I don't.

Q What was the convention?

A Then it was, I think, the National Association of Taxicab Owners.

Q Do you recall whether that was prior to 1964?

A I believe so.

Q Did Rockwell advertise its taximeters in Taxi Weekly?

A Yes, sir.

Q And to whom were these advertisements addressed? To whom were you trying to sell taximeters by advertising in Taxi Weekly?

A (No response.)

Q Who did you understand that readership to be?

A Owner-drivers and fleets; to whoever read the paper.

Q Do you recall what percentage, approximately, of your sales of taximeters were to fleets, as opposed to owner-drivers?

A No, sir, I don't.

Q Do you recall whether sales to owner-drivers were more than [illegible] fleets?

A That I don't remember.

Q You sell to both?

A Yes, sir.

Q Do you recall having a conversation with Morris Lefkowitz concerning Taxi Weekly?

A I may have, but I don't remember.

Q You have no recollection of that?

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A No, sir, I don't.

Q Do you recall giving a deposition in this case on November 6, 1968?

A I think so.

MR. WENTZEL: Mr. Pratt, would you show the witness the transcript of that session, please.

Q Now, sir, directing your attention to page 7 of that transcript, I ask you whether you recall giving the following answers to the following questions. I am beginning at line 12:

"Q Let me pin down something, anyway. Certainly Mr. Lefkowitz, the elder, the father, I gather, he was one of the people who came to you; you mentioned that.

"A He asked me why we were still --

"Q What you said to Mr. Peterman at the time of that conversation. I don't know whether it was three or four years ago, about Mr. Lefkowitz. That was the truth then. Those were the actual details as they were on the tape. I don't want to put words in your mouth.

"A At that time, he asked me why we were still -- I am trying to remember the right word -- why we were still advertising in Taxi Weekly. Didn't I know that that was no longer the fleet newspaper?"

Q Does that refresh your recollection about the conversation which you had with Mr. Lefkowitz?

A No, sir.

Q Do you recall speaking with any other fleet owners about Taxi Weekly?

THE COURT: Where do we stand. Is that testimony stricken or what? He doesn't recall.

MR. NESSEN: I move to strike. I think this is probably the wrong procedure, your Honor. It does seem to me that what we should do is to show the witness.

THE COURT: If you want to refresh his recollection, show him the document.

All right, I will strike the testimony so far.

MR. WENTZEL: Wait a minute, your Honor.

Q Was that truthful and accurate when you gave it in November 1968?

A It must have been.

Q And you had a recollection at that time?

A Yes, sir.

MR. WENTZEL: I ask that the testimony not be stricken, your Honor.

THE COURT: All right, that's a different thing. You have a right to read his deposition. I didn't mean to get technical and maybe I was, but anyway, the testimony will stand.

Q Mr. Moore, do you recall giving a further deposition in my office on August 18, 1970?

A Yes, sir. The date I don't remember, but I remember being in your office.

Q Yes, sir.

Let me show you a document that was marked as Plaintiffs' Exhibit A for identification at that deposition.

MR. WENTZEL: I will have it marked again, if your Honor wishes.

(Plaintiffs' Exhibit 15 marked for identification.)

xxx

Q Let me show you Plaintiffs' Exhibit 15 for identification, Mr. Moore, and I ask you to look at that, and particularly at page 4, and see if it refreshes your recollection concerning a conversation you had with Mr. Lefkowitz about Taxi Weekly.

MR. NESSEN: Your Honor, may I approach the bench?

THE COURT: Okay.

(Discussion at the bench.)

(Discussion off the record.)

THE COURT: I think the passage at the bottom of the page could refresh his recollection.

MR. NESSEN: I just don't want him reading from it.

THE COURT: No, he doesn't have to read it.

MR. NESSEN: All right, as long as we understand it.

(In open court.)

THE COURT: Mr. Moore, the lawyers are asking you about events that occurred maybe ten, nine years ago, or so.

Now, the questions to you, at least at this point, are basically: Does something refresh your recollection?

Now, what that means is just exactly what it says. Do you look at the document and does it bring back to you a memory of something? And under no circumstances are you to take the document as suggesting something, nor are you to quote the document, or anything like that. Do you understand me?

THE WITNESS: Yes, your Honor.

THE COURT: So you just search your memory carefully. If it does bring back a memory of something, and that can happen, then you say so, and you describe that memory. If it doesn't, and you are just reading words, and it doesn't awake even a memory, tell the lawyer it doesn't.

Are you clear on what we are asking?

THE WITNESS: Yes, your Honor.

THE COURT: Okay. Does that document refresh your memory as to any conversation with Morris Lefkowitz?

THE WITNESS: No, it doesn't.

THE COURT: Okay.

BY MR. WENTZEL:

Q Mr. Moore, do you recall a conversation with Mr. Peterman at your premises in November, 1965?

A I remember Mr. Peterman being there; yes, sir.

Q Do you recall whether at that time Rockwell was still advertising in Taxi Weekly?

A I don't remember, sir.

Q Now, did Rockwell cancel all its advertising in Taxi Weekly at one time?

A That I don't remember, sir.

Q Let me ask you this: Do you recall the nature of Rockwell's advertising in Taxi Weekly?

A They had an ad. That's all I can remember.

Q Was it something more than just a classified listing? Do you know what I mean by that?

A No, sir.

Q By that, I mean just a listing of the name

"Rockwell" and perhaps an address. Was it something more than that, an inch or two big?

A I don't remember, sir.

Q Do you know whether there came a time when Rockwell cut down from a larger type ad to just a classified listing? Do you recall that?

A No, I don't.

Q Can you recall telling Mr. Peterman that you had had a conversation with Mr. Lefkowitz about Taxi Weekly?

A No, I don't.

Q Do you recall telling Mr. Peterman that quite a few of your customers had given you the needle about Rockwell?

THE COURT: That's too suggestive, Mr. Wentzel. Please.

Q Do you recall --

THE COURT: I think the problem is, it's so long ago, that it's just too bad he just doesn't remember. Is that right?

THE WITNESS: Yes, sir.

THE COURT: Work it out some other way.

Q Do you recall any of your customers talking to you about Rockwell's advertising in Taxi Weekly at this time?

A No, sir, I don't.

THE COURT: Speak up a little bit.

THE WITNESS: All right, sir.

MR. WENTZEL: Your Honor, perhaps I should approach the bench.

(Discussion at the bench.)

MR. WENTZEL: It appears to me, your Honor, the witness has a total failure of recollection on these events. There are a number of volumes of his deposition which I would like to read, because he did recall certain events years ago when his deposition was taken. I have tried a few of the passages and they haven't stirred his recollection.

THE COURT: Is there any objection?

MR. WENTZEL: I think I could release the witness if I could read the relevant portions of the deposition.

THE COURT: Is there any objection?

MR. NESSEN: I think it is improper.

MR. WENTZEL: I don't think it is improper. I think the failure of the recollection of the witness is under the new Federal Rules of Evidence, the grounds of unavailability, which permits a deposition to be read.

THE COURT: Let's check that. Where are the rules?

MR. WENTZEL: Mr. Pratt is my expert.

MR. PRATT: Your Honor, I think the first thing might be that it's not --

THE COURT: What Rule are you talking about now?

MR. PRATT: 801, the definition of"hearsay."

MR. NESSEN: That's not our problem here.

THE COURT: Mr. Wentzel said that the lack of memory is grounds for reading a deposition. What's the Rule on that?

MR. PRATT: It is because the lack of memory has been defined in the Federal Rules --

THE COURT: I have got the Rules here and I have got the comments here. Just give me a reference.

MR. WENTZEL: One of the definitions of "unavailability" is: "just a failure of recollection."

THE COURT: Please, can you just point it out.

MR. PRATT: Let me refer you right at the moment to Rule 803, Subsection 24(c).

THE COURT: Yes?

(Pause.)

THE COURT: I think that when you have a case coming to trial, nine and ten years after the events, where the deposition of a witness has been taken, it be subject to cross-examination, and I think it would be in the interests of justice to have that read.

MR. NESSEN: Where are you reading, Judge?

THE COURT: 803, Subsection 24. It seems to me that's -- I think we have equivalent circumstantial guarantees of trustworthiness far better than many of the exceptions to the hearsay rule in the other parts of 803. All the things are complied with.

MR. NESSEN: It's hard to do this in the abstract. I have --

THE COURT: I don't think it's so abstract.

MR. NESSEN: I don't mean the Rule; what he proposes to read.

THE COURT: I think that we just have to take that one step at a time. You indicate the page and indicate where you are going and he can look over your shoulder so he can note an objection before you read the question.

MR. WENTZEL: Why don't we do this: I will terminate my questioning of the witness so counsel can cross-examine; and I thought I would just get together the passages and let him recess and call my next witness.

THE COURT: But I think he has to be able to have your -- all of your material before he cross-examines. Is it going to take you long?

MR. WENTZEL: Well, if you will just give me three or four minutes.

THE COURT: Oh, sure. All right.

(In open court.)

MR. NESSEN: I will take an exception to your Honor's ruling.

THE COURT: All right.

MR. McGRATH: Will you note my exception, your Honor?

THE COURT: Mr. Moore, and ladies and gentlemen of the jury, since the events were long ago, and you appear not to remember that the deposition was taken, Mr. Wentzel will simply read portions of the deposition, and to isolate those portions, and then you would remain on the stand. If anybody has any further questions for you after that, they can ask them.

The band was playing, so you didn't hear.

The witness does not recall the events, but his deposition was taken some years ago, and apparently, there are some portions of the deposition which require a little better memory by the witness; and Mr. Wentzel is going to take a minute or two and decide what selections he wants to read, and then Mr. Moore will stay on the stand; and after all of that, any of the other lawyers, if they have any other portions of the deposition they wish to read, or questions for Mr. Moore, why, they can carry that out.

(Pause.)

MR. WENTZEL: I apologize for taking so long, your Honor. I promise to do better on other depositions.

THE COURT: That's all right.

MR. WENTZEL: I would just like to read a few passages from Mr. Moore's deposition in this action. Page 31, line 1:

"Q Well, during this period of time that we have been discussing, 1964 to 1966, were your major customers fleet owners?

"A About half-and-half."

On the second session, page 8. Strike that.

Picking up where I left off a little earlier, on page 7, after the conversation I read earlier concerning Mr. Lefkowitz. The next question is:

"Q Who else besides?

"A That's what I am trying to think of, Mr. Geller. Right now it is four years and you are asking me to think back. I remember the conversation, but don't to God's truth remember the names. I'm trying to think of the ones who talked to me at that time.

"Q You are convinced, I take it, from that tape, that it was the association that was in back of this pressure on Rockwell to cut down its advertising; was that your understanding? Was that your understanding at the time?

"A That's at the time I didn't really -- I thought these men belonged to the association as far as I knew. As far as I knew they had, but I have no list to say who did and who didn't.

"Q But you also thought that at the time the association was in back of it; was that your understanding?"

MR. NESSEN: I object to this, your Honor.

THE COURT: Sustained.

MR. NESSEN: And move to strike the whole thing.

THE COURT: Yes, it's stricken. All that about his understanding, pressure, the whole thing is stricken.

MR. WENTZEL: Page 12, the same session.

MR. NESSEN: Give me a chance now, please, to look at what you are reading.

THE COURT: You can follow along. Why don't you stand up there and look over his shoulder?

MR. NESSEN: I don't like to interfere with his reading, your Honor, but where are you now?

MR. WENTZEL: Line 5:

"Q Weren't these major companies of yours, these fleets of over 50 cabs?

"A The biggest fleet at that time when Mr. Peterman was in, the major customer at that time, the largest fleet I had was Mr. Lefkowitz."

MR. NESSEN: He said page 11, your Honor, and he went to page 12.

THE COURT: All right.

MR. NESSEN: Your Honor, I don't see the relevance of that, but it's fine as read.

THE COURT: All right. What's next?

MR. WENTZEL: Page 18:

THE COURT: We can't take time describing it back and forth. Look over his shoulder and observe it, so we can move along.

MR. NESSEN: He has notes there, your Honor, that I don't want to see.

THE COURT: Why really care. You have to work together.

MR. WENTZEL: Starting at line 15:

"Q What was the pressure they were exerting on you? You tell me.

"A They were saying that they -- let me put it this way. They were saying that why wasn't I--not I, but Rockwell, advertising in Taxi Weekly.

"Q What were they pressuring you to do?"

MR. NESSEN: Objection.

THE COURT: I will not permit questions that are not answered. The only things I will permit are questions about conversations or observations, but not what he thinks somebody else thought; so let's just skip that right away.

MR. WENTZEL: I have nothing further, your Honor.

THE COURT: All right. Any cross or further deposition reading?

MR. NESSEN: Just a moment, your Honor.

CROSS-EXAMINATION

BY MR. NESSEN:

Q Mr. Moore, it is a fact that you had nothing to do with advertising, did you?

A No, sir.

Q In fact, you weren't even consulted about advertising, were you?

A No, sir.

MR. NESSEN: I may read from page 20 of volume 1.

Let me see if this comports with your Honor's request.

THE COURT: Let me take a look.

(Pause.)

MR. NESSEN: Bottom of the page, your Honor, beginning line 23 of volume 1:

"Q Customers of Rockwell ask you to take away advertising from Taxi Weekly?

"A As far as I can remember, no."

MR. NESSEN: Maybe we can do this quickly. There is a list of who was not customers. Can we stipulate, Mr. Wentzel, without reading it at this time, what the witness said were or were not customers on the bottom of page 48? Is that okay?

THE COURT: It's easier just to read them.

MR. NESSEN: Maybe it is:

"Q Were any of the customers with which Nathan Levine was associated of Rockwell, in '64, '65 and '66?

"A No.

"Q Was Ann's Service Corporation, in which Mr. Milton Marks was a principal, a customer of Rockwell?

"A Not that I remember; no.

"Q Was Lenox Maintenance in which Mr. Leon Murstein was a principal, a customer of Rockwell?

"A No.

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"Q Was Butler Maintenance Corporation a customer of Rockwell?

"A No.

"Q Was N Operating Corporation, Mr. Gerald Naren was a principal, a customer of Rockwell?

"A No.

"Q Was Columbia Operating in which Mr. Ira Suchman was a principal, a customer of Rockwell?

"A No.

"Q Was Schaffran Maintenance Corporation, in which Mr. Leonard Schaffran was a principal, a customer of Rockwell?

"A No."

MR. NESSEN: All right, your Honor. I think that does it.

THE COURT: Anything else?

MR. WENTZEL: Your Honor --

THE COURT: Any further questions of this witness, Mr. McGrath?

MR. McGRATH: No, your Honor, no cross.

THE COURT: Do you have anything else?

MR. WENTZEL: Well, let me just explain something to your Honor, if your Honor please.

(Discussion at the bench off the record.)

MR. WENTZEL: Your Honor, there are a couple of other questions from the deposition that I wish to read into the record that relate to the tape.

THE COURT: Let me see those.

MR. WENTZEL: First of all, at the bottom of page 15.

THE COURT: Just as far as laying any foundation there is a question and answer here in the deposition as follows:

"Q That tape that you just heard, there is no question in your mind -- if there is, I want you to state it right now for the record -- that everything that you heard on that tape was part of the conversation that was had between you and Mr. Peterman in your Long Island office am I correct?

"A It was."

Okay.

MR. WENTZEL: Now, your Honor, I would like permission either to play that tape or to offer in evidence the transcript of that tape which the witness has also identified in the course of his deposition.

THE COURT: Well --

MR. PRATT: Under the same theory that we talked about before.

THE COURT: Let's have the transcript. I think you better have these marked.

MR. NESSEN: I object very strenuously. You have a witness on the stand.

THE COURT: I would like to go ahead. I cannot rule without reading the transcript.

Now, I just can't -- I am not going to have everybody sit around while I do that.

MR. WENTZEL: Insofar as the termination of the conspiracy point is concerned with respect to this particular tape, this conversation occurred after there was a cutback, but before there was a final cancellation.

THE COURT: Well, all I can do is read the transcript which I will, and I think you better -- let's go ahead with the next witness, because I'm not going to sit and read the transcript which, I assume, is many pages.

MR. WENTZEL: Twenty-five or 30 pages.

MR. NESSEN: Your Honor, it certainly -- surely is not a record that should go into evidence.

THE COURT: Please.

MR. McGRATH: May I just note my objection on this point.

MR. NESSEN: He hasn't ruled yet.

THE COURT: You will have to give it to me to read.

Okay, let's go ahead with the next witness.

(In open court.)

THE COURT: You may step down, Mr. Moore.

(Witness excused.)

MR. WENTZEL: I call Mr. Saslow, your Honor.

DONALD SASLOW, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Saslow, you are here today under subpoena?

A Yes.

Q What is your occupation, sir?

A An automobile dealer.

Q What is the name of your dealership?

A Smith Haven Dodge.

Q Where is that located?

A Long Island.

THE COURT: Smith what?

THE WITNESS: Smith Haven Dodge.

Q What city in Long Island is it located in?

A Smithtown.

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Q How long have you been employed there?

A Approximately five, six years, now.

Q By whom were you employed prior to that?

A I'm sorry?

Q By whom were you employed prior to your present employment?

A Rockville Centre Dodge.

Q Is that also on Long Island?

A Yes, Rockville Centre.

Q Were you ever employed by Ebbetts Field Dodge?

A Previous to Rockville Centre, yes.

Q During what period of time were you employed at Ebbetts Field Dodge?

A Approximately some part of '64 through, I guess it was the latter part of '68.

Q What positions did you hold?

A Sales manager.

Q Did you have overall responsibility for the sales of Ebbetts Field Dodge of automobiles?

A Overall?

Q Yes.

A Well, I had a say, certainly, but the final decision was with the president of the company.

Q Did he perform a sales function?

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A He was involved.

Q What were your specific duties as sales manager?

A Generate sales from the salesmen.

Q Did you have salesmen working under you?

A That's correct.

Q Were any of the sales of Ebbetts Field Dodge sales of taxicabs?

A Yes, we sold taxis.

Q Do you recall how much or what percentage of the sales of Ebbetts Field Dodge were taxicabs?

A I would only be guessing.

Q Do you recall whether it was a much as ten percent?

A I think it was more than that.

Q Did you have any person assigned, particularly to the area of selling taxis?

A Yes, we had a taxi manager.

Q What was his name?

A Eisenman.

THE COURT: What was that, please?

THE WITNESS: Eisenman.

Q What was his first name?

A Isidore.

Q Was he known as "Izzy"?

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A Yes.

Q Did he report directly to you?

A More or less.

Q Did Ebbetts Field Dodge have any fleet-owner customers at that time?

A Not to my knowledge.

Q To whom were sales to owner-drivers made?

A I don't understand the question.

Q I answered it, I'm sorry.

To whom were sales of taxicabs made?

A To owner-drivers.

Q Were they made to owner-drivers?

A Yes.

Q Were these sales made in fleets or groups of cars or one at a time?

A One at a time.

Q Did Ebbetts Field Dodge conduct any advertising during that period of time?

A Yes.

Q Do you know in what media Ebbetts Field Dodge advertised?

A I would guess -- I don't really remember if some of it was on radio. I guess some of it was in newspapers. I don't really remember all the aspects of

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the advertising.

Q Was there any part of that advertising that was directed to the taxi industry?

A Yes, I'm sure part of it was.

Q Are you familiar with Taxi Weekly?

A Yes.

Q Did Ebbetts Field Dodge advertise in Taxi Weekly?

A I believe so.

Q Had it been advertising in Taxi Weekly before you went -- before you became employed by Ebbetts Field Dodge?

A I don't recall. I can't really say.

Q Do you recall the nature of the ads in Taxi Weekly?

A Basically.

Q Do you recall how big they were?

A Not really, no.

Q Do you recall that they were as big as a quarter of a page?

A Possible.

Q Did there come a time when Ebbetts Field Dodge terminated its advertising in Taxi Weekly?

A I believe there was a time when we stopped

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advertising in Taxi Weekly.

Q What was the reason for that?

A I really don't know exactly. It apparently was in our best interest not to.

Q Was there any other automobile dealership that you regarded as a major competitor in the sale of taxicabs?

A Yes.

Q Who was that?

A Future Motors.

Q Do you recall whether Future Motors advertised in Taxi Weekly?

A Yes, I believe they did.

Q Do you recall whether there came a time when Future Motors discontinued their advertising?

MR. NESSEN: I think that we have evidence here, explicit evidence of what Future Motors and all of them done in tabulated form, and I don't think we ought to bother this witness about that, further.

THE COURT: Well, I assume this is just background for something else. Obviously, the facts about this discontinuance, I believe, will be stipulated, but if it's just background, go ahead.

MR. WENTZEL: If Mr. Nessen prefers, I will elicit specific facts.

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MR. NESSEN: Why is it necessary with this witness on the stand?

Q Do you recall, Mr. Saslow, when it was that Ebbetts Field Dodge terminated its advertising in Taxi Weekly?

A Not really.

Q In July of 19[illegible] Does that accord with your recollection?

A Could have been.

Q Do you recall whether Future Motors had stopped advertising in Taxi Weekly prior to Ebbetts Field Dodge terminating its advertising?

A I assume we followed Future's lead. We normally would.

Q Now, when Ebbetts Field Dodge stopped advertising in Taxi Weekly, did it adopt any other advertising to reach the owner-drivers of taxicabs?

A I don't really remember.

Q Do you recall having a conversation with Mr. Peterman in November of 1965?

A It supposedly happened. I don't really recall it.

Q Were any of the sales of taxicabs which Ebbetts Field Dodge made -- did any of those sales involve insurance

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brokers in any way?

A -- Sure. Brokers recommended business to us.

Q That was one of the ways that you got business, to sell taxicabs?

A That was one of the ways you sold anything.

Q Do you recall any insurance brokers ever speaking to you about advertising in Taxi Weekly?

A I don't recall.

Q Do you know whether Chrysler Motors Corporation had any interest in Ebbetts Field Dodge while you were employed there?

A I believe they did; yes.

Q Do you recall whether Chrysler, anyone from Chrysler ever said anything to you about advertising in Taxi Weekly?

MR. NESSEN: I object.

THE COURT: Sustained.

MR. NESSEN: Your Honor, would you mind if one of my associates handles this witness?

THE COURT: Not at all.

MR. NESSEN: Mr. Turchin.

THE COURT: All right.

Q Mr. Saslow, would you take a look at Plaintiffs' Exhibit 16 for identification and I ask you whether that

MR. NESSEN: Why is it necessary with this witness on the stand?

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A Not really.

Q In July of 1965? Does that accord with your recollection?

A Could have been.

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A It supposedly happened. I don't really recall it.

Q Were any of the sales of taxicabs which Ebbetts Field Dodge made -- did any of those sales involve insurance

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refreshes your recollection as to a conversation which you had with Mr. Peterman on November 5, 1965.

A I'm sorry. What would you like to know?

Q The question: Does that document refresh your recollection as to a conversation which you had with Mr. Peterman in November of 1965?

A Vaguely. I presume it's me they are referring to, but I certainly don't recall anything I could add.

Q Was this document I have shown you -- does it reflect the conversation that you did have with Mr. Peterman?

MR. TURCHIN: I object, your Honor.

THE COURT: Overruled.

A I'm sorry. Can you repeat that?

THE COURT: Does it reflect your conversation with Mr. Peterman, that document?

A I can't state emphatically, but I presume so. How could I be a hundred percent sure?

Q Don't you recall any of the subjects, generally, that are in that?

A Vaguely, as I said before. It was a long time ago.

THE COURT: Okay. What's next.

Q Can you recall ever receiving any telephone

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calls concerning your advertising in Taxi Weekly?

A --Not specifically. It could have been, but I don't really remember, specifically, any phone calls or from specific people.

Q-- Are you saying that you did get some telephone calls about advertising in Taxi Weekly?

A No, I didn't say that. I said there could have been. I don't remember any.

THE COURT: We are not interested in "could have been." Just search your memory and tell us --

A I cannot recall any specific phone calls.

Q Do you recall telling Mr. Peterman that before you would resume advertising in Taxi Weekly, you would have to see Future Motors first?

MR. TURCHIN: I object to the question.

THE COURT: Well, I don't particularly like this form of questioning.

Ladies and gentlemen of the jury, you have got to remember that a question isn't evidence. Sometimes, it's very nice if all a lawyer has to do is say, "What happened," ~~and~~ nothing is suggested and nothing is conveyed by the question, to the jury, and the jury isn't at all confused; but sometimes you can't avoid having specific pointed things asked, but you have got to remember that the lawyer's question isn't evidence at all; it's only the witness' answer. And if the witness answers "Yes," he has answered the question; if the witness answers "No," he doesn't. Then your question is one of questionability, but the means is the evidence.

I will allow it.

Q Do you have the question in mind?

THE COURT: Ask it again.

Q Do you recall in your conversation with Mr. Peterman, whether you told him that before Ebbetts Field Dodge would resume advertising in Taxi Weekly, you would have to see Future Motors advertising there, first?

A Do I recall saying it to him?

Q Yes.

A No. I could very well have said it --

THE COURT: Don't say "you could have." Anything could have happened. I could have built the Brooklyn Bridge, but I didn't. Now, let's just restrict it to your memory. You have no memory of such a statement, is that right, or do you?

THE WITNESS: It seems to me that it would be the thing for me to say; but if you are asking me: do I remember sitting in a specific seat and facing that man and saying that, I can't recall that.

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THE COURT: All right, that's the answer.

Q Do you have any memory of any conversations concerning Ebbetts Field Dodge terminating its advertising in Taxi Weekly?

A I cannot recall any specific information.

Q Do you recall any information about Ebbetts Field Dodge resuming its advertising in Taxi Weekly?

MR. TURCHIN: I object to that question, your Honor.

THE COURT: What do you mean "information"?

MR. WENTZEL: I am sorry, I misspoke.

THE COURT: Conversations?

MR. WENTZEL: Yes.

A I can't recall anything, specifically.

MR. WENTZEL: Your Honor, may I approach the bench?

THE COURT: Surely.

(At the bench.)

MR. WENTZEL: Once again, your Honor, in view of the witness' failure of recollection, I don't have any further questions of him, but again I would like to offer in evidence, and I will lay a further foundation through Mr. Peterman, if you wish the transcript of the conversation.

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THE COURT: Is there anything from the deposition that you can use?

MR. WENTZEL: I don't wish to use anything from that.

THE COURT: Well, I think what we better do, then, is to give me -- let's have that transcript marked for identification and I won't guarantee getting through those transcripts over the noon hour, but I will get to them as soon as I can, because I have another hearing, but I will just do the best I can and rule on those transcripts.

MR. NESSEN: Your Honor, may I preliminarily give you some --

THE COURT: Let's not have preliminary watch guides. I will just have to read it. We have got five minutes. If you have got any other short witness, you can call, now.

MR. WENTZEL: No, not five minutes.

THE COURT: Where do we go from here?

MR. WENTZEL: This afternoon I have Mr. Peterman, a bunch of things to put in through him; and also, I have got a number of depositions to read.

MR. PRATT: And there may be an additional witness.

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MR. NESSEN: Who is that? There are supposed to be no secrets.

THE COURT: Now, we have got to buckle down on the question of what you stipulated this afternoon. When can you -- what have you arrived at?

The jury can be excused until 2:15.

MR. McGRATH: Judge, if we have 15 minutes, I may have one question to ask the witness.

THE COURT: I'm sorry, members of the jury. There is a little -- another question or two for this witness, and then we will take our break. Please.

MR. NESSEN: Your Honor, you surely don't --

THE COURT: No.

(In open court.)

THE COURT: I think there are one or two questions on cross.

MR. WENTZEL: I am not sure whether it appeared in the record, but subject to our discussions, I have no further questions.

THE COURT: Mr. McGrath?

MR. TURCHIN: I have no questions, your Honor..

MR. DINKES: I have no questions.

CROSS-EXAMINATION

BY MR. McGRATH:

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Q Mr. Saslow, do you recall your company, Ebbetts Dodge, advertising in the UTOG Newscaster in 1963, '4 and '5?

A I think we did; I don't recall specifically.

Q I show you three newspapers: The first is October, 1963; the second is November, 1963; and the third is December, 1963.

I ask you: Does an almost quarter-page ad from Ebbetts Field Dodge appear in each and every one of them?

A Yes.

Q Is it the same display ad in each and every one of them?

A Yes.

Q And it bears the picture and the name of Izzy Eisenman, the taxi manager; is that correct?

A Yes.

MR. McGRATH: Your Honor, in pre-trial proceedings, we produced for the plaintiffs the copy.

THE COURT: What do we need the statement for? Are you offering these?

MR. McGRATH: Yes.

THE COURT: Let's have them marked for identification --is there any objection?--if there is no objection.

MR. WENTZEL: Could I just look at them, your Honor?

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THE COURT: Let's have them marked for identification as the defendants' next exhibits.

(Defendants' Exhibits AP, AQ and AR marked for identification.) xx

THE COURT: All right, those exhibits are received.

(Defendants' Exhibits AP, AQ and AR for identification received in evidence.) xx

THE COURT: Any further questions?

BY MR. McGRATH:

Q Now, in 1964, was this same type of ad carried in the UTOG Newscaster?

A I don't know. I don't recall.

Q Did your company advertise in the UTOG Newscaster as a vehicle or medium to get to the owner-driver?

A Obviously, by the nature of those ads you just showed me.

MR. McGRATH: Thank you. No further questions.

THE COURT: You may step down.

(Witness excused.)

MR. McGRATH: In the course of pre-trial proceedings we produced for the plaintiffs the 1964 edition of the UTOG Newscaster. They were the only copies that --

THE COURT: You arrange that and give them back

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to him.

THE COURT: Now the jury can retire, if you please, until 2:15, and I will talk to the lawyers for just a minute.

(The jury left the courtroom.)

THE COURT: Now, Mr. Peterman, please get the tape recordings out of sight.

Second, I want to know what you have been able to stipulate to, so we can get that in, quickly.

Have you got some documents?

MR. PRATT: Your Honor, at this point, I think we have the stipulation on the circulation figures. We don't have -- well, I think we are right at the point of it.

MR. TURCHIN: Cancellation dates, we have.

THE COURT: Is that something you put in evidence right after lunch?

MR. NESSEN: Why don't we type them back at the office and put them in tomorrow, or you can read them into the record?

THE COURT: In other words, everybody knows that that material is covered by stipulation and I take it there is a similar stipulation on advertising.

MR. NESSEN: There isn't, your Honor.

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THE COURT: What is the problem on that?

MR. NESSEN: It's characterization.

THE COURT: Look, there is no reason to even have -- there can be bland statements of fact about that subject.

MR. NESSEN: Except my point is, your Honor, say Group 1, take the invoices.

MR. PRATT: That's a different question. We are now talking about dates, not who they are, but just dates.

MR. NESSEN: You have a stipulation of -- no, no. The schedule is in the interrogatories.

MR. WENTZEL: That's a copy of one of the interrogatories.

MR. NESSEN: No, no. I mean the schedule that we stipulated. It shows a decrease, just explicitly month-by-month.

MR. PRATT: That's a different one.

MR. NESSEN: I don't want it this way and I don't agree to it this way.

THE COURT: What's the issue?

MR. NESSEN: There really is no issue here at all. The facts of how much each month each one of their major advertisers did is all in a neat box. It shows

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exactly --

THE COURT: Where is the neat box?

MR. NESSEN: For example, here it is. What more do we need? And I don't want this summary.

THE COURT: In other words, you are saying that the answers to interrogatories contain these specifics?

MR. NESSEN: Right, and you can make whatever jury argument you want.

(Discussion at the bench off the record.)

THE COURT: Well, I am afraid that probably -- obviously, this material attached to the answers to interrogatories is almost impossible for anybody to deal with and make any sense out of, but I think that it contains the raw material; and as far as making sense out of it, I think you just have to -- I would say this: I would permit you to put in evidence, or have somebody testify to some fair characterization of some of these things, even if Mr. Nessen won't agree to it, because, obviously, you have to work with this in an intelligible way.

I don't know whether this sheet of paper which you have given me, which is Plaintiffs' Exhibit 4 for identification, is or is not a fair usage of this material, and let's try it right now.

Future Motors -- where is Future Motors in the eblm 101A

answers to interrogatories?

Your summary says, "Cut back about December 7, 1964, and --

(Discussion off the record.)

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AFTERNOON SESSION

THE COURT: Before the jury comes in, I want to discuss these transcripts. I am prepared to rule, at least on 15 and 16 for identification -- those are the transcripts -- well, 15 is the transcript of the conversation between Mr. Peterman and Glenn Moore, November 1, 1965.

16 is the conversation between Mr. Peterman and Saslow and Eisenman, dated November 5, 1965.

I will not permit a reading of any of those transcripts for the following reasons:

The basic reason is that this is a kind of an ex parte deposition, and the important points in these conversations are largely narrative descriptions of what happened in the past, or what is said to have happened in the past.

There are characterizations described, such as pressure, succumbing to pressure, this and that.

Now, the depositions of all these people were either taken or could have been taken, and every question about pressure, about any other relevant subject, could have been explored thoroughly at those depositions. These tapes or these transcripts could have been used for impeachment purposes, or refreshment-of-memory purposes, or anything else at that time; but the main thing is that the depositions were either taken or could have been taken of all of these people, and at such depositions, the defense attorneys would have the opportunity to ask for the particulars of conversations: ask about what was meant by "pressure," ask about who, when, what, and so forth; and, I think, as I have indicated, to the extent that there are materials in depositions, such materials can be used because there is basically no element of unfairness, because the witnesses could be cross-examined then and there.

Now, if I admit these tapes, we have a situation where Mr. Peterman is basically interviewing people without the presence of anybody else to clarify or cross-examine, naturally, and as far as I am concerned, we just have an ex parte deposition, and I can't see the slightest justification for admitting that, when every single one of these people either were deposed, was deposed or could have been deposed.

Now, one can say that the conversations could be admitted and the parties like Mr. Moore, Mr. Saslow and so forth, could be cross-examined [illegible], that's a theoretical right more than a [illegible] because the events are ten years o[illegible] quite

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sincere with me this morning, that they have no memory, so where is the right of cross-examination? It's really non-existent.

As far as the theory that these were statements made by co-conspirators in furtherance of the conspiracy, I think that at least on 15 and 16, that's as far as I was able to go. I think that basically, that is belied by the statements themselves. The important parts are narratives of past events elicited by Mr. Peterman, and I can't even see a theory of how this could be a statement in furtherance of a conspiracy to sort of bare their breast to Mr. Peterman about what went on. It's just the opposite. So I think it's a serious point, the admissibility of these statements. I think it, obviously, would be of very substantial help to the plaintiffs. I don't question that for a minute.

I feel or realize that this is a serious matter, but it would be a serious detriment to the defendants, and the thing that tips the scales strongly in favor of the defendants on this issue is the vital fact that there were depositions available to be used.

The questioning should have been done on the depositions, and if it was done in the statements and not the depositions, that was a very poor situation, if that

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was allowed to be the result of all this.

So, I sustain the objections to 15 and 16.

I am not in a position to rule on the other two things given to me. I assume my ruling is the same, but I think I will certainly examine any specific items that you hand to me and see if anything is on a different basis, but I think you better be prepared that I will stick to the basic ground rules that I have used.

Now, I think you better mark for identification two other items which were given me before lunch, but weren't marked for identification, and that is a handwritten note, 10/28, 6:15 that starts out referring to Terry O'Leary and then another is a typewritten transcript of a conversation between Mr. Peterman and Mr. Pacwitz, and these should be marked as the next exhibits for identification.

Now, this covers not only the reading of transcripts, but it covers the testimony about such conversations by Mr. Peterman. To the extent that the ground rules are.

MR. WENTZEL: Your Honor, while these are being marked, I did point out to your Honor that these exhibits which you just handed back, which are now being marked 31 and 32, were on a different footing in that they are conversations that occurred at the time of the cancellation of advertising. One of them is --

THE COURT: I am sorry to say, I just couldn't look at those over the luncheon recess.

MR. WENTZEL: I realize that, but I did want to explain to your Honor that they are on a different footing and in that respect, in an anti-trust case, there is an additional reason for admitting such conversations.

THE COURT: Were there depositions taken?

MR. WENTZEL: No.

THE COURT: Was Pacwitz's deposition taken?

MR. WENTZEL: No.

THE COURT: Why wasn't it?

MR. WENTZEL: I have no idea, your Honor.

THE COURT: It was a bad oversight. It was a bad oversight. What was the other fellow?

MR. WENTZEL: They are all people out in Detroit, your Honor.

THE COURT: There are court reporters out in Detroit. I will look at those, but I just -- I don't want to rule without looking at them, but --

MR. WENTZEL: Yes. I would point out to your Honor this: In an anti-trust case, there are a number of decisions, and I will furnish you citations if you wish, which hold that an anti-trust plaintiff may offer evidence

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as to the circumstances under which the lost business, when he is claiming a loss of business in such a case.

THE COURT: I don't doubt that at all. I don't for a minute question the relevancy of this, and I think it's quite unfortunate that more of this material wasn't covered more thoroughly on depositions, and apparently it wasn't. But that's not a reason for committing what I think would be a gross act of unfairness to the defendants. I just can't do it.

I will take your new exhibits.

MR. NESSEN: Your Honor, we haven't seen them. Could we take a look at them?

THE COURT: Yes, but I am not going to work on them right now.

MR. WENTZEL: Your Honor, I just want to be sure that the record is full with respect to this ruling.

Do I have a concession from the defendants that their objection is not based upon a foundation for the admissibility of the tape recordings?

MR. NESSEN: You mean that the witness, Mr. Peterman, would say he was there and he took the tape and he kept it within his own power and didn't do anything? I am sure that he would testify that way.

THE COURT: That could easily be. That isn't the

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problem.

MR. WENTZEL: I just want to make sure the record is clear.

THE COURT: I think the record should show that the only problem presented to me and the only problem I am ruling on is exactly the one that I spoke of, and foundation problems are not raised nor ruled on, nor the basis for my ruling.

MR. WENTZEL: Secondly, your Honor, there are a number of other taped conversations. I think there are three others which I would mark for identification and tender them in the form of an offer of proof, if you wish.

THE COURT: Yes, I think you should do that.

MR. NESSEN: And you have our objections.

THE COURT: Yes.

MR. NESSEN: Your Honor, we are still working on and maybe will get a cancellation withdrawal stipulation.

THE COURT: I think you can bring the jury back in.

(Plaintiffs' Exhibits 31 and 32 marked for identification.)

(The jury entered the courtroom. Time noted: 2:40 o'clock p.m.)

THE COURT: You can submit those later. I will handle them this evening.

Can you go ahead with either a witness or a deposition?

MR. WENTZEL: I would like to read from some depositions at this time.

THE COURT: Fine.

MR. WENTZEL: And with the Court's permission, Mr. Pratt is going to save my voice a little bit.

THE COURT: That's fine.

MR. NESSEN: Which one are you taking first?

MR. WENTZEL: Hold on a second.

THE COURT: I assume that these are depositions of defendants; right?

MR. WENTZEL: Yes.

THE COURT: Let me just explain to the jury that, as you probably are fully aware of now, a deposition is testimony taken before a trial. A court reporter present, it's usually taken in a lawyer's office, and the reporter takes down a transcript just as the reporter is now doing. The witness is under oath, and he is examined and cross-examined by the various lawyers. When it comes to a trial, there are various rules about what can be done with the depositions, but in this instance,

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the plaintiffs have a right -- the plaintiffs' lawyers have a right to read all or part of depositions of other parties; that is, the defendants.

So, go ahead.

MR. NESSEN: Which one are you reading?

MR. PRATT: Baron; Salvatore Baron.

THE COURT: I would like to have the jury told the dates and told who is doing the examining.

MR. PRATT: This is a deposition on two dates. The first date is July 3, 1969, and the questions are by Mr. Geller.

THE COURT: Who is Mr. Geller?

MR. PRATT: He was, then, plaintiffs' attorney. And I begin at page 5, line 13:

"Q What office do you hold in United Taxi Owners Guild?

"A I am the Executive Director.

"Q Do you hold any other office?

"A I am the Treasurer of Federal Credit Union."

Now, turning to page 6:

"Q Did you hold these same positions in the years 1964, 1965 and 1966?

"A Yes.

"Q In those years, because those are the years I

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am interested in, what were your duties as Executive Director of United Taxi Owners Guild?

"A That would take an hour to answer.

My duties -- one of the duties was to publish the house organ for the members of United Taxi Owners.

"Q What was the name of that house organ, if it had a name?

"A United Taxi Owners Newscaster.

"Q And how frequently was that published?

"A Monthly.

"Q And was that all during the period 1964 through 1966?

"A Yes.

"Q When you say 'you published it,' were you the editor?

"A Yes.

"Q Were you responsible for whatever was in it?

"A Yes.

"Q What other duties did you have?

"A Let's see. What are my duties? I represent the organization, provide for all the benefits that the organization has for its members.

"Q Let me see if I can concentrate on one particular duty, if it was yours. Was it one of your duties -- again in these years 1964 to 1966 -- to ascertain the views of the members of United Taxi Owners Guild and to publicize those views and, where necessary, to effectuate them? Is that a fair statement?

"A No.

"Q Did you say 'No'?

"A Yes, I said 'no,' because if you are speaking about what the policy of the paper was, I, as editor, only represented my Executive Board. It was their policy that had to be presented.

"Q I am talking not just about the paper; I am talking about United Taxi Owners Guild, itself.

"A I represent, as Executive Director, my Board of Directors. It is their policy that I represent.

"Q Did you take your orders from the Board of Directors or from officers?

"A The Board of Directors, which includes officers.

"Q Yes. Were you an officer?

"A As Executive Director, I am elected by my Board of Directors to express the viewpoint of the Board of Directors. The policy of the organization, the benefits of the organization, the conduct of the organization is controlled by the Board of Directors."

THE COURT: We are hearing the same thing. If

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the jury didn't know five minutes that he was a servant of the Board, they couldn't hear English.

Now, if we are just going to plow through a deposition and hear the same thing over and over again, I am just going to ask you to suspend.

MR. PRATT: I think we can move forward, your Honor. The final sentence of this portion is: "I only represent their position."

THE COURT: Okay.

MR. PRATT: Beginning on page 11:

"Q Were you the spokesman then, of the Board of Directors of United Taxi --

THE COURT: Let's skip that. It's a repetition of what he has already said three times; the rest of the page, also.

Where do you go now?

MR. PRATT: I am going to page 19, your Honor, beginning at line 15:

"Q To your understanding, was The Hackman a newspaper that reflected the views of the fleet owners?

"A I didn't read the paper.

"Q The ITOC News, I take it, when it came into existence, was a newspaper that reflected the views of the ITOC?

"A Yes."

THE COURT: I will mark on your copy, where it was read, in brackets.

MR. WENTZEL: Your Honor, I have the original here if you would like.

THE COURT: That's all right. I'm fine.

MR. PRATT: Now, beginning on page 21, at line 18:

"Q Was it part of your job to be aware of what was going on in the union-organizing drive?

"A Yes.

"Q And was it also part of your job to take whatever action your Board of Directors in UTOG or United Taxi Owners Guild thought you ought to take or ought to be taken --

"A Yes.

"Q-- for owner-drivers in it?

"A Yes.

"Q Does the same hold true with respect to the issue of fare increase that was being debated in one or more of those years and that ultimately resulted in the ten cent increase in the starting fare in the taxicabs in New York City?

"A It was my duty to represent the viewpoint of the Board of Directors; what their viewpoint was, I can't tell you right now; whether they were for or against the increase at the time, I don't recall.

"Q Does it refresh your recollection that they were in favor of a 25-cent jump in the starting fare, as opposed to a 10-cent jump?

"A That is not true.

"Q Were they in favor of the 10-cent increase?

"A They were in favor of an increase, and it was neither 10 or 25.

"Q Was it larger than the increase that was ultimately given?

"A Yes."

Beginning on page 26, at line 10:

"Q Who was Morris Markin?

"A Who is Morris Markin?

"Q Yes, to your knowledge and understanding.

"A He is the president of Checker Cab Manufacturing Corporation.

"Q And that company is a manufacturer of Checker taxicabs?

"A That is correct.

"Q Did he hold that same position in the years 1964 to 1966?

"A I would assume he did. He still holds it.

"Q What was his reputation, to your knowledge, as Executive Director of UTOG --"

There was an objection.

"Q --within the taxi industry in New York City, in the years 1964 to 1966."

MR. McGRATH: May I renew that objection at this time, if your Honor please?

THE COURT: Overruled.

MR. PRATT: (Continuing):

"Q Mr. Baron, the objection having been made, will you answer the question?

"A Frankly, I personally was not too interested in Mr. Markin one way or [illegible] other.

"Q I know you may not have been interested in him, but I want to get from you the extent of your interest.

"A From the little I knew about Mr. Markin, his reputation was not good.

"Q Do you know now the reason for that, or did you know the reason?

"A No, I don't.

"Q Perhaps I can refresh your recollection."

THE COURT: That isn't even answered. He ended up saying: He didn't recall your question. So why don't you go over to 28? Let's see if that was answered.

Yes, I guess it was.

Beginning at line 11 on 28, there is a question which was answered on the next page. Do you want to read that?

MR. PRATT: On line 10, you say?

THE COURT: 28, line 11:

"Q Let me put it this way --"

MR. PRATT:

"Q -- was it a fact that Mr. Markin was disliked because he favored the purpose-built cab which is the Checker cab, and the return to that type of car in place of the stock-car type that is presently used in New York City?

"A My answer would be that many of my members disliked him for that reason. I personally did not dislike him for that reason.

"Q Was an accusation that someone in Markin's pay or had Markin behind him financially or otherwise, an accusation that would be likely to be harmful to the individual who was accused of --"

MR. McGRATH: Objection at that point, your Honor.

THE COURT: Well, I think, the trouble is, you

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have got these questions -- go down to line 22, would you?

MR. PRATT: (Continuing):

"Q Was an accusation that someone in Markin's pay, or had Markin behind him, an accusation that was likely to hurt the accused person in these years that we have been talking about within the taxicab industry in New York City?"

MR. McGRATH: I object to that, your Honor.

THE COURT: Overruled.

MR. PRATT: (Continuing):

"Q I just want to amend my question a little bit so that it may be more helpful to you and in better form. I am asking for your understanding from your experience in the taxicab industry, as the Executive Director of UTOG in these years: Would that reflect your understanding?

"A That at some time, at some place, somebody was accused of being in the employ of Morris Markin; is that your question?

"Q My question was: If he was so accused, or if it was said that he had Markin behind him, would that be harmful to him, to the accused's reputation?

"A It might be, depending on who the individual was and what his dealings with Markin were. I wouldn't know, but I wouldn't say that it would be so in every case.

"Q Were you once accused of being in Markin's pay in these years, and particularly in connection with the issue of the taxi fare increase?"

MR. NESSEN: I don't see the relevancy of accusing him.

THE COURT: Yes, I will sustain that objection.

MR. PRATT: Your Honor, I plan to read through line 17.

THE COURT: That objection was -- we have covered that. Okay.

MR. NESSEN: Your Honor --

MR. McGRATH: We have two or three pages of this combination of repeated questions and colloquy and everything, and then we get to this portion here, and I would ask that that be read.

MR. NESSEN: I will withdraw my objection if co-counsel wants it.

THE COURT: What do you want read?

MR. McGRATH: From 5 to 17.

THE COURT: All right. Go ahead.

MR. PRATT: (Continuing):

"Q Were you once accused of being in Markin's pay in these years, and particularly in connection with the

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issue of the taxi fare increase?

"A Yes, I think I was accused of being in his employ at one time.

"Q When that accusation was leveled at you, did you object to it?

"A Yes.

"Q Did you object to it vigorously?

"A Yes."

Beginning on page 35 at line 4:

"Q Did Mr. Peterman have a conversation with you?"

MR. McGRATH: Before you read that, your Honor, have you read that question? I think your Honor ruled on those questions before. It's on page 35, line 4.

THE COURT: Well, this is a situation where the man is on deposition and could have been cross-examined about anything he said, so I will allow it.

MR. McGRATH: Except, your honor, that we didn't have the transcript of that taped conversation at the time.

THE COURT: But you had the statements that were testified about.

MR. McGRATH: We didn't; that's the point.

THE COURT: No, but you had in the testimony anything he said, and he said to Peterman. You could have questioned what did he mean, and so forth, so I think I will allow it. I will allow it.

MR. PRATT: Your Honor, may I read the question, again?

THE COURT: Yes.

MR. PRATT: (Continuing):

"Q Did Mr. Peterman have a conversation with you in 1966 in which he asked you why you were saying that Markin was behind him?

"A I don't recall that.

"Q Do you recall that he had any conversation with you on the subject?

"A Yes, I anticipated the question. I had conversations with him. Whether I had conversations with him dealing with Markin, I don't remember.

"Q Do you recall having a conversation with him in your office in July, 1966?

"A Yes."

MR. PRATT: Turning to page 36 at line 10:

"Q What was the subject of that conversation?

"A I remember having a conversation with him sometime in 1966 with Les Peterman, in my office.

Does that answer the question?

"Q Yes. Then I ask you: What was the substance of the conversation, as you recall it?

"A As I recall it, Mr. Peterman wanted to know if I was looking to put him out of business, and if I recall what my sentiments were, I would more than put him out of business. Generally, that was my attitude.

"Q Do you recall anything more specifically in the conversation?

"A No, that's all I remember."

Turning to Volume 2.

MR. NESSEN: Your Honor, I submit that the next, under Rule 32, that the next few questions and answers ought to be read.

THE COURT: You can read those, now.

MR. NESSEN: Would you, Mr. Pratt?

The bottom of page 36.

MR. PRATT: (Continuing):

"Q What did you say in that conversation --

"A The reason was, the guy was attacking me editorially; every issue of Taxi Weekly blasting Baron. That's why I said I would do more than put him out of business."

Shall I continue?

THE COURT: Anything else, Mr. Nessen?

MR. NESSEN: The bottom of the page, I think, 19; beginning with line 19, if you would, Mr. Pratt.

MR. PRATT: (Continuing):

"Q Did you say that you had talked to other people to act with them to hurt Peterman and to put him out of business?

"A No, I talked to no one."

MR. NESSEN: Would you continue, please?

THE COURT: If you want things, why don't you read them?

MR. NESSEN: I will be happy to read them. I thought, under Rule 32, that Mr. Pratt would do it.

THE COURT: No, it's just easier.

MR. NESSEN: (Continuing):

"Q Did you say to him that you talked to no people that you were friendly with, in order to hurt him?

"A No.

"Q You said to other people that Morris Markin was behind him?

"A No."

MR. NESSEN: That's all I have.

THE COURT: All right.

MR. PRATT: Now, turning to the second session of the deposition of Mr. Salvatore Baron, taken on the first day of December, 1969 at page 5:

"Q Mr. Baron, do you recall a conversation with Mr. Peterman, the subject matter of which is what you hear on the tape?

"A I recall that a conversation took place, but I don't remember what I said there because I can't even hear myself right now.

"Q Now, the tape is not running now. This is just recording the tape because the court reporter won't take down the tape.'

"A Whatever you can get out of this tape here."

THE COURT: Why are you reading this? I see no point in this. Let's get to something of substance.

MR. PRATT: Your Honor, may I commence at the bottom of page 56, dealing with the substance of that. This is line 24:

"Q Did you hear the dialogue in which you said to Mr.--"

THE COURT: Wait a minute, now. Yes, I see. Okay, start there.

MR. PRATT: (Continuing):

"Q Did you hear the dialogue in which you said to Mr. Peterman that he was crucifying you? Do you recall such conversation?

"A Do you want to play it back? I have got plenty of noise, also.

"Q You didn't hear any of it?

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"A I don't feel too well and I have got a cold. My
ears are stopped. Do you want to play it once more?

"Q -- I will play that again because this is very
clear to me. If you can't hear it, I will play it ag

"A I will assume that I heard it.

"Q You don't have to assume anything.

"A I will assume that I hear it.
What is your question?

"Q My question is: Did such a conversation tak
place between you and Mr. Peterman?

"A Yes, yes. Don't ask me when."

And then on page 58 of the same transcript, beginning at line 23:

"Q This last part of the conversation, this was
also part of the conversation that you had with Peterman?

"A Well, I am listening, so obviously it must have
been, unless this thing has been edited. I can recognize
my voice at this point."

That's all that we have to read from Mr. Baron's.

THE COURT: All right. Next deposition.

MR. NESSEN: Your Honor, can we read, now?

THE COURT: All right, you read what you want.

MR. NESSEN: My friend, Mr. Turchin is going to take the stand.

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THE COURT: Fine.

MR. TURCHIN: Page 12, line 23:

"Q Mr. Baron, was there another part of your job, again, in these years 1964 to 1966, to have regular communication with representatives of other organizations that were connected with what you understand to be the taxicab industry of New York City?

"A No, because our organization -- I am volunteerin information -- has always been on the outs with most of the industry. We are called the maverick of the industry.

Page 13, line 14:

"Q Did you, from time to time, speak with a representative of that organization -- referring to Metropolitan -- on matters of common interest, whether you had the same viewpoint or not?

"A Rarely. Again, we didn't see eye-to-eye with the Metropolitan Taxicab Board of Trade.

"Q I am not talking about whether you saw eye-to-ey I just want to know whether you even spoke to them to find out why they disagreed with you.

"A There was no line of communication with them. We didn't see eye-to-eye. We hated each other's guts."

Page 24, line 13:

"Q On that question of the union-organizing drive,

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did you from time to time during those years, 1964 to 1966, consult with the representatives of other taxicab organizations in New York City?

"A No."

MR. TURCHIN: That's all I have.

THE COURT: All right. Next deposition.

MR. PRATT: We will next read from the deposition of Morris Heit, which was taken on October 23, 1969.

MR. NESSEN: Just a second, Mr. Pratt, please.

Your Honor, have you got a copy of that?

THE COURT: No. Can I have a copy?

MR. NESSEN: I have one.

Do you have a copy for the Judge?

MR. PRATT: This is page 2 at line 21:

"Q Mr. Heit, are you a taxicab fleet operator?"

THE COURT: This is taken October 23, 1969, and, again, the questioning is by the then plaintiffs' attorney, Mr. Geller.

MR. PRATT: That's correct, your Honor. Excuse me for not mentioning that.

The answer is:

"A I am.

"Q Do you do business through a business corporation?

"A Yes.

"Q A management corporation?

"A Yes, sir.

"Q What is the name of the corporation?

"A Chase Maintenance Corporation.

"Q Are you the sole stockholder?

"A No, sir.

"Q Who else is a stockholder with you?

"A Mrs. Ruth Rubeck.

"Q Any others?

"A What?

"Q Any others?

"A Yes, there is another one: David Preston.

"Q Do you each own an equal amount of shares, or do you own a controlling share?

"A No. At the moment, without the other two, I am the controlling shares.

"Q Are you the president of the company?

"A Secretary.

"Q Who is the president?

"A Ruth Rubeck.

"Q Are you the chief officer in charge of actual operations, however?

"A I am."

MR. PRATT: Turning to page 4, beginning at line 15:

"Q How many taxis are managed by that management corporation, Chase Maintenance?

"A One hundred.

"Q Was this the situation in the years 1964, '65 and '66? Was it substantially the same number?

"A Yes, sir.

"Q What is the situation with respect to the stockholders and the officers?

"A Remain the same.

"Q Remained substantially the same in the years '64,'65 and '66?"

MR. NESSEN: Your Honor, is this relevant?

THE COURT: I will take it.

MR. PRATT: (Continuing):

"A Right.

"Q Have you ever held any office in the Metropolitan Taxicab Board of Trade, Inc.?

"A Not as an officer. I was a director at one time.

"Q What years were you a director?

"A I don't remember at the moment.

"Q Were you a director in 1964?

"A '64, I believe I was.

"Q How about '65 and '66?

"A I do not believe I was in '65 or '66. Perhaps I may be. I don't remember at the moment.

"Q But you were in 1964?

"A I think so.

"Q Did you attend meetings of the Board of Directors?

"A Occasionally.

"Q About how long had you been a director before '64?

"A Oh, I would say about three or four years, if it was in existence at that time. I don't recall the years.

"Q Were you the representative of Chase Maintenance active in the Metropolitan Taxicab Board of Trade?

"A I am."

MR. PRATT: Now, turning to page 6 at line 19:

"Q Say, in the year 1964, do you recall about how many meetings you went to?

"A Maybe six, seven or eight; something like that."

MR. NESSEN: Could I read the next line, your Honor?

"Q Did you hold any other office other than director --

"A No, sir.

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"Q-- in Met Board of Trade?

"A No."

MR. PRATT: Line 3 on page 11:

"Q Was Mr. Friedlander a leading individual within the Metropolitan Taxicab Board of Trade?

"A That's right.

"Q Would you say he was in the leadership position?

"A That's right.

"Q The top man?

"A Yes.

"Q How about Mr. Botwinick?

"A On occasion, when Mr. Friedlander was indisposed.

"Q Was Mr. Botwinick high in the council? Was he one of the leaders of the organization? I am specifically limiting it to these years, '64, '65 and '66.

"A Well, I would say he was one of the leaders. Most of my dealings with Botwinick was on account of my company, who he was the accountant of.

"Q He did not exercise a leadership position within Taxicab -- Metropolitan Taxicab Board of Trade?

"A No.

"Q Did he attend meetings of the Board of Directors?

"A Mr. Botwinick?

"Q Yes.

"A Yes.

"Q Did he attend the meetings that you attended? Did he attend fairly regularly?

"A I used to see him there.

"Q Did he preside at any meetings?

"A He would preside when, as I stated, Mr. Friedlander was indisposed.

"Q Did he also act as a spokesman for the organization, publicly?

"A Well, he had some things to say.

"Q From time to time?

"A Yes.

"Q Did he act as a spokesman for the organization?

"A Yes.

"Q Were they the two dominant men in the organization?

"A What?

"Q Were they the two dominant men in the organization -- Mr. Friedlander and Mr. Botwinick?

"A They were.

"Q Was your company, Chase Maintenance, a subscriber to Taxi Weekly?

"A Yes.

"Q Was it a subscriber in any part of 1964?

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"A If that was the date and they were still a subscriber, I would say yes.

"Q There came a time when you cancelled this subscription. When was that?

"A What year?

"Q I'm just asking you.

"A Yes.

"Q Had you been a subscriber for several years before that?

"A Yes.

"Q Were you the person that cancelled this subscription?

"A I was.

"Q Was there a reason for cancelling the subscription?

"A Well, it is -- does anybody have to have a reason to cancel a subscription?

"Q What was your reason?

"A I don't think the paper was doing me justice.

"Q In what respect did it not do you justice?

"A Well, from running my business. I think it did not do anything towards my business.

"Q You cancelled it because you did not think it did anything to help your business?

"A To help my business.

"Q As far as you are concerned, did it do anything to hurt your business?

"A Well, it didn't do anything to help it."

MR. PRATT: Now, beginning on the same page, page 14, at line 15:

"Q In your opinion, did the newspaper do anything to hurt your business?

"A Well, I would say it didn't do anything to hurt it or help it.

"Q At the particular time when you cancelled it, was there a particular reason why you cancelled it, other than it didn't do anything to help your business? Was there some focal point that decided you at that time to cancel your subscription?

"A Well, I imagine if it -- going back to the rate increase, I did not see anything in the paper defining the -- who would get the increase in the rate of fare.

"Q When you talk about the rate increase, you are talking about what became of the ten cent taxi fare increase?

"A Right.

"Q When you say, 'you couldn't find anything in the paper about who would get --'

"A Yes.

"Q --the ten cent increase,' what do you mean?

"A To divide it. In other words, five cents for the driver, and this for hospitalization, or this for disability, or this for that, and so much for us for increased costs on the various items, because of the increase in wages.

"Q When you say, 'you did not see anything about this in the newspaper,' was there something you were looking for?

"A Yes, I wanted something to have the drivers notified that they did not accuse us of keeping the whole nickel."

MR. NESSEN: I think that's "dime" there. I think that's an obvious mistake.

MR. PRATT: Now, beginning on page 18 at line 11:

MR. NESSEN: May we read the other two questions?

THE COURT: Yes.

MR. NESSEN: (Continuing):

"Q Was it your opinion that the newspaper was unfair in not publishing what you thought were the facts about the distribution of the ten cent fare increase?

"A It was."

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MR. PRATT: On page 18, line 11:

"Q Who was it that said the other five cents was going to anybody? Where was he going to find out about this from?"

THE COURT: I'm sorry. Where are you?

MR. PRATT: Page 18, your Honor, at line 11:

"Q Was it a proposal of the Metropolitan Taxicab Board of Trade?

"A This is the arrangement, I believe. We did not get the whole five cents -- put it that way -- the balance.

"Q When you say, 'you did not get the whole five cents,' was this according to some proposal that was being made by the Metropolitan Taxicab Board of Trade under that proposal?

"A When the rate increase was proposed as to how that other five cents to the driver and five cents left over would be going to the various funds to pay for the fringe benefits.

"Q Whose proposal was it?

"A It was the Taxicab Bureau.

"Q Taxicab what?

"A Board of Trade.

"Q Taxicab Board of Trade?

"A Yes.

"Q In other words, are you saying, as far as you were concerned, in your opinion, Taxi Weekly omitted the details or some details of a proposal made by the Metropolitan Taxicab Board of Trade as to the disposition of the proposed ten cents fare?

"A Right.

"Q Is that correct?

"A Yes.

"Q Do you recall when that proposal was made? Was it in 1964?

"A Well, when the proposals were made, we had a meeting down in City Hall. The dates, I don't remember.

"Q Now, how did you know, personally, as of your own knowledge, that Taxi Weekly omitted these details?

"A It never said anything in the papers.

"Q Did you read Taxi Weekly?

"A I read it.

"Q Was there a particular point when you cancelled it that there was something in Taxi Weekly, some news article or editorial that disturbed you enough to cancel it?

"A I just cancelled it. That's all."

MR. PRATT: Now, turning to --

MR. NESSEN: Your Honor, could we read the next line?

THE COURT: Yes.

MR. NESSEN: (Continuing):

"Q Was this a cumulative feeling?

"A Yes."

THE COURT: Now where do we go?

MR. PRATT: The next item we had marked, your Honor, deals with the fourth and fifth causes of action, and I will skip it.

THE COURT: All right, skip that.

MR. NESSEN: Your Honor, if we can take our recess now, I want to call a witness and tell him not to come here.

THE COURT: All right, we can take our recess now.

(Recess.)

MR. PRATT: Shall I begin again, your Honor?

THE COURT: Yes.

MR. PRATT: Continuing in the deposition of Morris Heit, page 39, line --

THE COURT: Where did we end off? Was it around the early twenties? I wanted to make a note.

MR. PRATT: I think it was page 20, your Honor, line 5, is my note.

MR. NESSEN: Line 7.

THE COURT: Twenty what?

MR. NESSEN: Line 7.

THE COURT: Of what page?

MR. PRATT: Page 20.

THE COURT: All right, and now you are going where?

MR. PRATT: To page 39 at line 13.

THE COURT: All right.

MR. PRATT: (Continuing):

"Q When you cancelled your subscription, or Chase Maintenance cancelled its subscription to the Taxi Weekly, did you advertise in some other paper after that? I mean, did you subscribe to some other paper after that?

"A Yes.

"Q What was that?

"A We tried that out.

"Q What was the other paper?

"A The one run by Al Zeff. I don't remember the name of it.

"Q The Hackman, was it?

"A I think so.

"Q Did you subscribe to that from the first issue?

"A Yes."

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MR. PRATT: Then on the same page, resuming at line 16.

MR. NESSEN: May I read the next line, your Honor?

THE COURT: Sure.

MR. NESSEN: (Continuing):

"Q What were the circumstances under which you took out a subscription to that?

"A New life. I thought, perhaps, it might help us."

MR. PRATT: Line 16, same page:

"Q Was it your opinion that the newspaper, The Hackman, would reflect the opinions and the policy of the Metropolitan Taxicab Board of Trade?

"A No, sir.

"Q You had no such opinion?

"A Of course not.

"Q Were you told anything of that sort by several?

"A Nobody.

"Q You weren't told it by nobody?

"A Nobody.

"Q Was it your understanding that when it was published, that it did reflect the opinions of the Met Taxicab Board of Trade?

"A No, sir.

"Q It did not?

"A No.

MR. PRATT: Picking up at line 17 on that page:

"Q Did Mr. McIntyre have any connection with The Hackman?

"A Yes, I think he did have at one time.

"Q At that time, was he also --"

THE COURT: I want to just -- where did you stop?

MR. PRATT: Page 41. I read through line 8, I believe it is, your Honor.

THE COURT: And you are resuming?

MR. PRATT: At line 17.

THE COURT: Okay.

MR. PRATT: (Continuing):

"Q At that time, was he also the public relations man for the Metropolitan Taxicab Board of Trade?

"A I don't remember whether he held both jobs. I don't remember that. I knew at one time he was a public relations man for the Taxicab Board of Trade. Whether he still remains as such after he went into The Hackman, I don't know."

MR. NESSEN: May I read the next two lines, your

Honor.

THE COURT: Yes.

MR. NESSEN: (Continuing):

"Q Did you ever speak to him about The Hackman?

"A No, sir.

"Q The only one you spoke to was Al Zeff about The Hackman?

"A That's right."

MR. PRATT: Now, recommencing at line 17 on page 42:

"Q Was there anything that you knew that would lead you to believe that his policy would be different from Taxi Weekly?

"A I wasn't concerned about a policy of any kind. I was concerned about giving the young man a chance. Like everybody else, I gave a chance. If I don't like it, I cancel.

"Q Did you know what his policy was on the taxi fare increase?

"A No, sir.

"Q Did he tell you what his policy was?

"A No, sir."

MR. PRATT: Now, picking up at page 58, line 10:

"Q Taking the years '64, '65 and '66, where did you buy your new taxicabs during those years? That is, where did Chase Maintenance buy its new taxicabs?

"A Since 1940, from the Dodge Motor Car Company.

"Q Was there some dealer in New York City that you bought them through?

"A Yes.

"Q Who was that dealer?

"A Future Motors.

"Q Who was the principal in Future Motors through whom you dealt?

"A I dealt with Harold Peter Freund.

"Q Were you the one in your company that dealt with Mr. Peter Freund in order to buy new taxicabs?

"A I did."

MR. NESSEN: Can I read the next two questions?

THE COURT: Right.

MR. NESSEN: (Continuing):

"Q Did you ever discuss with Mr. Peter Freund: Taxi Weekly, its contents, or Mr. Peterman, or his policy on any subject?

"A No.

"Q Did you ever tell Mr. Peter Freund or suggest to him that he or his company or Dodge Motor Company should not advertise in Taxi Weekly, or should cut down its advertising in Taxi Weekly?

"A No, sir.

"Q Was there anybody else in Chase Maintenance that dealt with Mr.Peter Freund at all?

"A No, sir."

THE COURT: Anything else?

MR. PRATT: Page 59 at line 15:

"Q Did you ever have any dealings with Mr. Sailler, Frank Sailler?

"A Yes, sir.

"Q Did you have such dealings at any time in 1965, '65 or '66?

"A Yes, he always came with Mr. Peter Freund to my office when they thought I needed new automobiles."

MR. PRATT: And that's all that we are going to read from the deposition of Mr. Heit.

MR. TURCHIN: Your Honor, I read from page 60, line 5:

"Q Did you ever discuss who --" the top of the page, continuing from Mr., he stopped -- "should advertise in Taxi Weekly?

"A It is my business. Why should I take it up with him. Of course not.

"Q Did you ever discuss with Sailler, Taxi Weekly or its contents, or Mr. Peterman?

"A No, of course not.

"Q Did you ever discuss with that gentleman whether Chrysler or Dodge or Future Motors should advertise in Taxi Weekly?

"A Definitely not. All I wanted to do was discuss how much this cost."

MR. NESSEN: Your Honor, do I understand or does the jury understand that the estate of Mr. Heit is now here and Mr. Heit is dead?

THE COURT: Right.

MR. PRATT: Now, reading from the deposition of Milton Marks, which was taken on October 9, 1969, the questions are again by Mr. Geller.

THE COURT: Go ahead.

MR. PRATT: Beginning at page 3, line 16:

"Q What is your name?

"A Milton Marks.

"Q Where do you live?

"A 190 East 72nd Street, New York City.

"Q Mr. Marks, are you a principal, that is, an officer, director or stockholder of a taxi-operating company?

"A Yes.

"Q Were you in 1964, 1965 and 1966?

"A I was.

"Q Was it the same company at all times, now and then?

"A Yes.

"Q What was the name of that company?

"A Ann Operating Corporation.

"Q Were you the President of that company?

Do you want to add something to the answer about the name of your company in 1964, '65 and '66?

"A The name was Ann Operating. It was subsequently changed to Ann's Service.

"Q But it was the same company; just the change of name?

"A That's right.

"Q Were you the President of that company?

"A That is right."

MR. PRATT: Now at page 6, line 7:

"Q Have you ever been a director of the Met Taxicab Board of Trade?

"A Yes.

"Q In what years were you a director? When did you first become a director?

"A That I cannot answer.

eblm 147 "M. Marks"

"Q Were you a director in 1964, 1965 and 1966?

"A Possibly."

MR. NESSEN: Can I read the answer beginning on line 21?

"A I am sure of the years that I was a member of the Board of Directors.

"Q Are you a director now?

"A No."

MR. PRATT: Now, beginning on page 12 at line 5:

"Q There was a time when you did cancel your subscription to Taxi Weekly, was there not?

"A Yes.

"Q What were the circumstances under which you did it?

"A I sent him a letter telling him to withdraw my subscription from his paper.

"Q Did you do it by letter or by telephone call?

"A If I am not mistaken, I think I did it by telephone call and then by letter.

"Q Do you recall the telephone conversation?

"A No.

"Q Did you give your reasons for cancelling your subscription to Peterman at that time, at the time you cancelled it?

"A The reason for --

"Q Did you give the reason?

"A At this particular time, no.

"Q Now, I will ask you these reasons and if so, what were they?

"A The major reason that I had was one whereby we were going through a ten cent increase problem which was about to be granted by the City of New York, and the purpose of the ten cents was one whereby practically all the ten cents would go to the benefit of the chauffeur, both in pay and in benefits. Apparently, there was some misunderstanding by the chauffeurs whereby they had the feeling that they weren't getting the entire benefit of the full ten cents Part of it might have been misappropriated. That was the general feeling. In a case like that, we knew that Les had a pretty good picture of the true story.

"Q When you say 'we knew,' who was 'we'?

"A That is myself, my brothers who were connected with me in the business. And the comments that appeared in the Taxi Weekly were such whereby we figured Les might clarify the distribution of the ten cents, which would make it more clear to the driver to understand how this money was truly reaching him. In my judgment, it didn't seem to be registering very clearly, if at all, in this paper, and that was the reason.

"Q Do you remember all of those reasons why you cancelled?

"A Yes. That was predominantly one of the main reasons?

"Q When did you cancel?

"A Offhand, I am not too clear as to the date.

"Q How did this all come up, this ten cent fare increase?

"A I can't even answer that too clearly. Dates at this time aren't that important to me; however --

"Q Was it important enough so that you discussed it with your brothers?

"A Oh, sure, at that time.

"Q Was it important enough so that you discussed it with other taxi fleet owners?

"A It was important enough to me to discuss it with my brothers basically, and occasionally if I were to meet a fleet owner, which I do all the time. You discuss these things with the time of day.

"Q You remember discussing Taxi Weekly with other fleet owners at this time?

"A Casually, yes."

THE COURT: Recap that a little bit.

MR. PRATT: I was at page 14 and we read the entire page through,"remembering discussing Taxi Weekly with other fleet owners at this time."

"Casually, yes."

THE COURT: All right.

MR. PRATT: Just a minute, your Honor.

Now, turning to page 43, line 13:

"Q But you subscribed to The Hackman when it came out?

"A All --

"Q You subscribed to the very first issue that had come out, didn't you?

"A Yes.

"Q How did you know what its policy would be when you subscribed to it?

"A It was a paper whose policy was maintained for the use of the taxi drivers and the fleet operators. We distributed his papers to the chauffeurs as we did other papers.

"Q Did you distribute it because you knew that its policy would be precisely the same as the Metropolitan?

"A I did not. How could I?

"Q That is what I'm asking you: How did you know to subscribe to it? Why did you subscribe to it?

"A It was a paper issued for the benefit of the taxi chauffeurs or drivers.

"Q Wasn't the Taxi Weekly a paper issued for the benefit of the fleet owners and drivers?

"A To my knowledge, yes.

"Q But you had just cancelled Taxi Weekly, had you not?

"A That is right.

"Q I am asking you now why, after just cancelling a newspaper that was published for drivers and fleet owners, did you subscribe to another paper?

"A We found their paper to our liking.

"Q But you subscribed to it from the very first issue before you even read a copy, is that right?

"A That is right.

"Q How did you know that its policy was going to be a policy that you would like?

"A We were told. When I say 'we,' my brothers and I were told about this paper coming out by Al Zeff, who knew, at one time was even connected with the other paper."

MR. PRATT: Your Honor, I am skipping one portion dealing with the --

THE COURT: Where do we go?

MR. PRATT: Page 81:

"Q Where had you bought your new cabs, in an operating or service company, in the last five years?

"A My recent car, which we have now, is a Chevrolet.. That was bought in Tremont Chevy. Prior to that, the four years prior to that, all Ford models, 1967s or '64s, I think.

"Q Where did you buy your Fords? At King Ford?

"A King Ford.

"Q Who did you deal with there?

"A With Bob Weiss."

MR. PRATT: And that's the end of the reading from the deposition of Milton Marks.

THE COURT: All right, what is the next deposition?

MR. NESSEN: Your Honor, may I continue reading right there?

THE COURT: All right.

MR. NESSEN: (Continuing):

"Q While you were dealing with King Ford, you have discussed with Bob Weiss or anybody else there the matter of their advertising in Taxi Weekly, did you?

"A None whatsoever.

"Q And you never had any such discussion?

"A No, sir.

"Q Did you ever tell Bob Weiss or anyone else connected with King Ford that you thought he and his company shouldn't advertise in Taxi Weekly?

"A I don't recall any such statement."

THE COURT: Are you finished, Mr. Nessen?

MR. NESSEN: I think so, your Honor.

MR. PRATT: Your Honor, I might read the next question in answer to that.

THE COURT: Go ahead.

MR. PRATT: (Continuing):

"Q When you say 'you don't recall,' do you deny you had such a conversation?

"A Well, that could be a denial or a questionable thing. I don't remember."

MR. NESSEN: That's it.

THE COURT: Okay. Now, the next one.

MR. PRATT: This is the deposition of Mr. Leon Murstein, taken on July 24, 1969. The questions are by Mr. Geller. Beginning on page 3 of the transcript at line 25:

"Q Mr. Murstein, what is your business?

"A Taxicab operator.

"Q Were you in that same business in the years 1964, 1965 and 1966?

"A Yes.

"Q Do you operate your business as an individual proprietor or through one or more corporations?

"A Through corporations.

"Q What is the name of your managing corporation?

"A Butler Maintenance Corporation.

"Q Is that the only management corporation?

"A That's right.

"Q Was that the only one you owned or controlled in the years 1964, 1965 and 1966?

"A No.

"Q What were the ones you had in those years?

"A Lenox Maintenance Corporation.

"Q Was that in addition to Butler?

"A Correct.

"Q In addition to those two managing corporations, did you also have several corporations which owned the taxi cabs that were managed by Butler and Lenox?

"A Yes.

"Q How many such corporations did you have?

"A About 26, I think, in Lenox, and about 30 in Butler."

MR. PRATT: And on page 7 of the transcript, beginning at line 2:

"Q In 1944 to 1964, in Lenox and Butler, in those years, were you the managing executive?

"A Right.

"Q Did Mr. Cohen have anything to do with the day-to-day management of those companies?

"A No.

"Q Were you the President of both companies in those years?

"A If I recollect, I think, yes. I'm not sure, though."

MR. PRATT: Then continuing at line 19 of that page:

"Q Are you now a member of the Met Taxicab Board of Trade?

"A Yes.

"Q Were you, in the years 1964 to 1966?

"A Yes.

"Q Are you now a director of the organization?

"A Yes."

THE COURT: Read that question and answer over again.

MR. PRATT: The problem is this.

MR. WENTZEL: I'm sorry. I believe this answer may have been changed when the deposition was returned to us.

THE COURT: I think I have the original.

MR. WENTZEL: Is there a letter in the back of the original there?

THE COURT: Okay.

MR. NESSEN: What does the letter say? Yes?

MR. PRATT: It's more lengthy than that.

MR. NESSEN: Just read it. If it says "Yes," I will accept that. There is no problem with it.

THE COURT: The answer at the top of page 8 should read "Yes."

"Were you a director of Metropolitan in 1964 to 1966?"

I am paraphrasing a little bit.

The answer, as corrected, should be "Yes."

MR. NESSEN: Can we read part of page 7, your Honor? I don't think that answer was read. My question is, that I have, at the bottom of page 7.

THE COURT: He says he is not now a director of the organization and that answer stands. Let's go ahead. He was a director during '64 through '66.

MR. NESSEN: Yes, that's what he testified.

MR. PRATT: (Continuing):

"Q Were you in the years 1964 to 1966:

"A Yes.

"Q You were not a director?

"A Yes."

MR. NESSEN: I think what he means to say is from 1964 to 1966 he was a director.

MR. PRATT: Continuing on page 13 at line 23:

"Q What was Mr. Peterman's and the Taxi Weekly's position on the fare increase in 1964?

"A Not favorable for the cab business.

"Q How did you derive your understanding of that position?

"A From the paper that I read, that they published.

"Q From the Taxi Weekly?

"A Correct.

"Q Did anybody discuss Mr. Peterman's position or Taxi Weekly's position in it?"

MR. NESSEN: You gave us the wrong page. Did you begin on the top of page 14?

MR. PRATT: No, I began on the bottom of page 13.

THE COURT: Begin again. Line 23.

MR. PRATT: (Continuing):

"Q What was Mr. Peterman's and the Taxi Weekly's position on the fare increase in 1964?

"A Not favorable for the cab business.

"Q How did you derive your understanding of that position?

"A From the paper that I read, that they published.

"Q From the Taxi Weekly?

"A Correct.

"Q Did anybody discuss Mr. Peterman's position or Taxi Weekly's position in the membership meetings of the Met Taxicab Board of Trade?

"A I did not hear them discussing anything.

"Q Did you hear them discuss it before the meetings?

"A No.

"Q Did you hear them discuss it after the meetings?

"A No.

"Q Did you hear any discussion among taxi fleet owners, whole, apart from the Met Taxicab Board of Trade on Mr. Peterman's position on the taxi fare increase?

"A I did not hear.

"Q What was that in Taxi Weekly that gave you the opinion that you had in 1964 that Taxi Weekly was opposed to the fare increase?

"A As far as I can remember, they weren't for the increase. I mean, I couldn't recollect exactly what it was, but I remember it was not favorable for the taxicab business.

"Q Did he take the position against any increase?

"A I couldn't recollect exactly. I couldn't tell you."

MR. PRATT: And that's the end of that session.

MR. NESSEN: Your Honor, could we have a date for this? The front page of ours is missing.

MR. PRATT: July 24, 1969.

Now, beginning on page 22 at line 19:

"Q Were your management corporations in 1964 subscribers to Taxi Weekly? Did they subscribe to the paper?

"A Yes, we did.

"Q Did they cancel their subscriptions in the year 1964?

"A As far as I can remember, they did."

MR. PRATT: Now, turning to page 28, line 6:

"Q Mr. Murstein, what was the reason that Lenox Maintenance Corporation cancelled its subscription in 1964?

"A It is written in the letter.

"Q Because of late deliveries of the paper?

"A Late deliveries, double charge. We never got some of the papers. I gave you the reasons in my letter.

"Q And the reason was not because of the position taken by Taxi Weekly --

"A No, sir.

"Q -- or by Mr. Peterman?

"A No, sir."

Now, on page 32 of the transcript at line 13:

"Q Do you recall having a conversation with Mr. Peterman on or about June 27, 1966?

"A I don't remember the date.

"Q But you do remember a conversation at Lenox Garage in 1966?

"A Right."

MR. PRATT: Page 36, line 2:

"Q Was it your practice in 1964, or about that time, to do whatever the leadership of the Met Taxicab Board of Trade wanted you to do with respect to matters that related to the whole industry?

"A For instance, what?

"Q With respect to the fare increase.

"A Sure. That's why I was a member of Metropolitan.

"Q Did you follow what the leadership wanted you to do when they made it clear what they wanted you to do?

"A If it was for my benefit.

"Q Did you not follow it sometimes even if you disagreed with it?

"A I had nothing to say about it. If the majority voted a certain thing, we have President Nixon. Maybe I don't like him, but we got him.

"Q Once the leadership of the Met Taxicab Board of Trade took a position, however, you adhered to that position, is that right?

"A Let me put it clearly: I belonged to the organization, and if I want to live up to it, to do what the majority votes, I got to do it. If not, I have no place there."

MR. PRATT: Now, turning to page 58, at line 13:

"Q In the years 1964 to 1966, did your managing corporations, or your ownership corporations buy cabs, new cabs, from a manufacturer or manufacturer's representative?

"A Yes, they did.

"Q Who was the manufacturer or manufacturer's representative?

"A Chrysler Corporation.

"Q Who was their representative in New York City, From whom you bought the cabs, or through whom you bought the cabs?

"A Future Motors.

"Q Did you know a man named Frank Sailler?

"A I did.

"Q Who was he?

"A Connected with fleet sales.

"Q Fleet sales for Chrysler Taxicab Division?

"A Right.

"Q Did you have conversations with him from time to time in the year 1964 to 1966?

"A Probably did.

"Q Why do you say 'probably'? Did you, in fact?

"A Yes."

MR. PRATT: And that completes Mr. Murstein's deposition.

MR. NESSEN: Can I continue right from there, your Honor?

THE COURT: Go ahead.

MR. NESSEN: (Continuing):

"Q Did you have more than one conversation with him in those years?

"A I don't remember how many.

"Q But did you have more than one?

"A Yes.

"Q Did you discuss with Frank Sailler the question of Les Peterman and/or Taxi Weekly?

"A No.

"Q You never did?

"A No.

"Q Did you ever tell Mr. Sailler, Chrysler or Dodge Taxicab Division or Future Motors, they should stop advertising or cut down its advertising in Taxi Weekly?

"A No.

"Q Did you ever tell that to Mr. Harold Peter Freund of Future Motors?

"A No.

"Q Did you ever tell that to anybody?

"A No."

THE COURT: All right. Any more depositions?

MR. PRATT: Jack Plotsky. This is a deposition taken on July 31, 1969. The questions are by Mr. Geller. Beginning on page 37:

"Q Mr. Plotsky, who had the authority in the Met Taxicab Board of Trade to tell Mr. McIntyre to cancel the subscription of the organization to Taxi Weekly?

"A Our counsel could have.

"Q Without any directions from the President or any other officer of the corporation?

"A Yes.

"Q Who was your counsel at the time?

"A Henry Friedlander.

"Q And he had the authority on his own to give instructions to the public relations man of the organization with respect to what position that man should take?

"A He could have made that direction.

"Q I am asking for his authority as President. Do you say, now, that Mr. Friedlander, as the attorney for the organization, had the authority to tell Mr. McIntyre to cancel Met's subscription to Taxi Weekly?

"A Yes.

"Q Did Mr. Botwinick have any such authority?

"A I don't think so.

"Q Who had such authority besides Mr. Friedlander?

"A It would have been our Board of Directors."

MR. NESSEN: Would you read the next question and answer, please, or may I?

THE COURT: All right.

MR. NESSEN: (Continuing):

"Q Did you, as President, have such authority?

"A Not without the consultation of the Board.

MR. PRATT: Beginning on page 52, at line 22:

"Q Why did you cancel your subscription to Taxi

Weekly?

"A Why?

"Q Yes.

"A Because of the position that Taxi Weekly took on certain pertinent matters that hurt our business.

"Q What were those certain pertinent matters?

"A Well, the rate of the fare increase.

"Q What other matters?

"A It could have been union matters.

"Q Was it the union-organizing drive, too, that was one of the matters in which you had a difference with Taxi Weekly?

"A I don't know, but I am certain that dollars and cents was the most pertinent one.

"Q And when you say 'dollars and cents,' you mean the fare increase?

"A The ten cent fare increase; yes, sir.

"Q How did you learn of the position of Taxi Weekly on the fare increase?

"A How did I learn?

"Q Yes.

"A I think it was in his newspaper.

"Q What was in his newspaper? What was the position of Taxi Weekly on the fare increase?

"A I don't know, per se, the words, whether we needed or we didn't need it, but I assume it was that we didn't need it. I don't know the exact words, but I knew it was detrimental at the time as a position that we couldn't bear with.

"Q And was that a position that was taken because -- before you wrote this letter cancelling your subscription, the letter that has been marked Plaintiffs' Exhibit B for identification in this examination?

"A It could have been.

"Q You say 'It could have been.' Was that the reason you wrote that letter?

"A The reason I wrote that letter is, because of the position of the paper, that was hurting my business personally, and I wasn't going to buy anything that was going to hurt me, whether a newspaper or a product.

"Q And you are gathering that from reading Taxi Weekly?

"A That's correct.

"Q That is how you knew that?

"A Yes.

"Q Was it your opinion or understanding that Taxi Weekly opposed the fare increase?

"A The word 'opposed' could be --

"Q Were they against it? If you don't know what I mean by 'opposed,' was Taxi Weekly against the fare increase?

"A I think it was the position of the whole area of the ten cent increase.

"Q I don't understand what you mean.

"A Well, it was a whole area. I don't remember the exact words, but it was an area that opposed the ten cent fare increase and the manner that it was asked for.

"Q And you understood this from reading Taxi Weekly?

"A I understood it at that particular time. I don't remember what the exact words were in Taxi Weekly at the time.

"Q Did you speak with Mr. Botwinick on this subject, the position of Taxi Weekly on the fare increase?

"A Mr. Botwinick only?

"Q I mean Mr. Botwinick, not only, but with Mr. Botwinick.

"A Yes.

"Q And what did he tell you about Taxi Weekly's position on the fare increase?

"A I told him my position about the fare increase.

"Q And he didn't tell you anything about Taxi

Weekly's position on the fare increase, or Mr. Peterman's position on the fare increase?

"A He didn't make up my mind about my position.

"Q I am just asking you whether he ever told you anything about Mr. Peterman's position, or Taxi Weekly's position on the fare increase.

"A No, he had no influence on my position.

"Q I am not asking you whether he had any influence on you. I am asking whether he ever told you or discussed with you in any way Taxi Weekly's position on the fare increase?

"A No. I would say no to that question.

"Q Did Mr. Botwinick ever report to you, either alone or together with other members of the Board of Directors of Met Taxicab Board of Trade, that he had had discussions with Mr. Peterman on the taxi fare increase?

"A I don't recall anything like that.

"Q You don't deny it; you just have a failure of recollection, is that it, at the present time?

"A I would say no to that.

"Q What was the occasion for your speaking to Mr. Botwinick and telling him what you thought about Taxi Weekly's position on the fare increase?

"A Mr. Botwinick is our accounting officer.

"Q Yes, but why would you tell your accountant, or why did you tell your accountant about the position of a newspaper on the fare increase?

"A Because it was a financial matter.

"Q And did you --

"A As an industry.

"Q And did you expect Mr. Botwinick to help you out in some way in that respect?

"A Mr. Botwinick's help is an evaluation of dollars and cents, but he didn't help me make up my mind.

"Q I didn't ask you that question. I asked you: Did you expect Mr. Botwinick to help you out in obtaining the fare increase when you spoke to him about it, or when you spoke to him about Mr. Peterman's position on the fare increase?

"A No, I didn't expect Mr. Botwinick to help me out in getting the fare increase.

"Q When you wrote this letter of July 14, 1964, which has been marked as Plaintiffs' Exhibit B for identification, had you just read some issue of Taxi Weekly that prompted you to write that letter?

"A No one specific issue. His attitude on the ten cent fare increase.

"Q But had you just read something in Taxi Weekly in a prior issue, an issue before July 14, 1964, on the subject of the ten cent fare increase, that prompted you to write that letter? Was there some specific article or editorial in the newspaper, that prompted you to write that letter on the ten cent fare increase?

"A I don't know whether it was a specific one newspaper edition that prompted me at the time.

"Q Do you know Mr. Abraham Wysinger?

"A Yes.

"Q Did you know him in 1964?

"A I probably did, but I don't know whether it was in 1964 I knew him.

"Q You have known him throughout the 1960s, have you not?

"A Right.

"Q And what did you know him to be in his business or professional capacity?

"A As a newspaperman.

"Q And what newspaper did he have an interest in?

"A Taxi Weekly.

"Q In 1964, what was his interest in Taxi Weekly?

"A I don't know when, the date that he dissolved his association with Taxi Weekly. It could have been around that time. I don't remember the date.

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"Q When you say, 'It could have been around that time,' do you mean around July, 1964?

"A Around that time.

"Q Did you, from time to time, have discussions with Mr. Wysinger in 1964?

"A I don't think so. I don't know in 1964.

"Q You knew that at some time, Mr. Wysinger dissolved, as you say, his interest in Taxi Weekly?

"A Yes, sir.

"Q How did he dissolve it?

"A Mr. Peterman bought his interest.

"Q And you knew that that was on the way, and that was the way it was done?

"A That's right.

"Q How did you ascertain that?

"A I guess I was notified as a customer that it was now Mr. Peterman's business.

"Q Did you have any knowledge at all about any negotiations between Mr. Wysinger and Mr. Peterman?

"A None.

"Q Did you receive this notification of the change of ownership from Mr. Peterman, personally?

"A I don't know.

"Q Did you read it in the newspaper?

"A Probably. I don't know how, but I knew there was a dissolution.

"Q Did you speak with Mr. Wysinger about the dissolution?

"A No.

"Q Do you know whether Mr. Friedlander spoke with him?

"A No.

"Q You don't know whether he did?

"A No.

"Q Do you know whether Mr. Botwinick spoke with him?

"A No.

"Q Were you aware that Mr. Wysinger, before he sold out to Mr. Peterman, tried to get Mr. Peterman to sell to Mr. Wysinger?

"A I don't know that.

"Q Do you know whether he tried to dissolve the corporation which owned Taxi Weekly?

"A I don't know that either.

"Q Before you wrote this letter in July, 1964, did you have any discussions with anyone about writing that letter in order to persuade Mr. Peterman to give up his interest in Taxi Weekly?

"A No.

"Q Before you wrote this letter, did anyone suggest to you that you write it?

"A No.

"Q Did you discuss writing it with anybody?

"A With my associates. I said I was sending the letter out on behalf of Metro.

"Q Who were the associates that you discussed it with?

"A Mr. Harris and Mr. Jacobs.

"Q Are they co-owners of Metro with you?

"A That is correct.

"Q Before July 14, 1964, when you wrote that letter cancelling your subscription, had Mr. Peterman, in your opinion, been opposing the taxi fare increase for some time?

"A I don't recall that, specifically.

"Q Hadn't the discussion of the taxi fare increase been going on for quite a period of time?

"A The industry was asking for a rate of fare increase for quite a long time.

"Q Do you have any reason why you picked this particular time, July 14, 1964, for writing that letter cancelling your subscription or your company's subscription to Taxi Weekly?

"A Because we received the copies on a regular basis, weekly or biweekly, I don't recall; and I cancelled before we got our next subscription.

"Q But I am trying to find out from you if you know now or recollect why you picked the time of July 14, 1964 as opposed to an earlier date or later date?

"A I don't know whether it was specifically the last position in the newspaper or a series of positions, but I decided at that particular time to cancel my subscription prior to getting any others.

"Q Did you know a Mr. Philip Rosenbloom in 1964?

"A Yes.

"Q What was his position in Metropolitan at the time?

"A I don't remember his position, but he was a member of the Board of Directors.

"Q Did you know that he was cancelling his subscription to Taxi Weekly at about the time you were cancelling yours?

"A I don't know.

"Q Did you discuss it with him, this idea of cancelling subscriptions to Taxi Weekly, with Mr. Philip Rosenbloom?

"A With him?

"Q Yes.

"A I had a discussion. It could have been Mr. Rosenbloom or another operator that called and said, 'I am cancelling my subscription,' or 'I heard you are cancelling your subscription.' I don't remember which came first.

"Q Did you have that discussion with more than one operator?

"A There might have been another one or two.

"Q Did you know that Mr. Gerald Naren, at that time, in July of 1964 --

"A Yes.

"Q Was he a member of the Board of Directors of Metropolitan Taxicab Board of Trade?

"A I believe so. I don't know whether he was or not, but I believe he was.

"Q Did you have a discussion with him about cancelling your subscription or the idea of cancelling your subscription of Taxi Weekly?

"A I do recall a couple of operators that spoke to me.

"Q Was Mr. Nathan Ehrlich one of them?

"A I couldn't recall a name that I spoke to. Nathan

Ehrlich is not a member of the Board, if that's what you mean.

"Q Did you know him in July, 1964?

"A I have known these people since 1926.

"Q Did you talk to them from time to time?

"A From time to time I talked to many people in our industry.

"Q Did you talk to the particular people I just named, in 1964: Philip Rosenbloom, Gerald Naren and Nathan Ehrlich?

"A Philip Rosenbloom, I am sure I spoke to in 1964 and Gerald Naren I am sure I spoke to in 1964. As for Mr. Ehrlich, I had occasion to speak to him very occasionally.

"Q How about Leon Murstein? Did you talk to him in 1964?

"A Do you recall the whole year of 1964?

"Q From time to time in 1964."

THE COURT: Okay, let's wake up everybody, please. Let's everybody stand up. We have got a few more minutes.

MR. PRATT: That's a nice break for me, your Honor.

(Pause.)

THE COURT: All right, let's go again. It will be just a few more minutes before we recess.

MR. PRATT: Three more pages of this passage, your Honor:

"Q Did you, in fact? I know it is possible.

"A I would say yes.

"Q Did you speak with him about cancelling your subscription to Taxi Weekly?

"A No, I don't believe so.

"Q Do you know Isidore Suchman?

"A Yes.

"Q Did you know him in 1964?

"A Yes.

"Q Did you know he was cancelling his subscription to Taxi Weekly?

"A I believe he told me so.

"Q Do you know that many taxi fleet owners at about the time that you were cancelling your subscription, were cancelling their subscription?

"A This I don't know.

"Q Was this a subject that was discussed at a meeting of the Board of Directors of Met Taxicab Board of Trade?

"A No.

"Q Was it discussed before or after a meeting informally among members of the Board?

"A This I don't know.

"Q Was it discussed in your presence by any other members of the Board or any other taxi fleet owners?

"A Well, I gave you one or two that spoke to me about it and my answer was yes.

"Q Do you recall any meeting, conference or conversation where there were several taxi fleet owners who discussed this subject?

"A No.

"Q But you discussed it individually with other taxi fleet owners?

"A No, no.

"Q Did you not testify, just to get this clear, that you had conversations, individual conversations with other taxicab fleet owners at or about the time you cancelled your subscription to Taxi Weekly? Was it just one or two and no more than two?

"A The most it could have been was three.

"Q And who were the three?

"A Philip Rosenbloom, Gerald Naren and Ira Suchman.

"Q Were you a member of the Taxicab Bureau at this time in 1964?

"A Yes.

"Q Was Mr. Rosenbloom a member of the Taxicab Bureau?

"A Yes.

"Q Was Mr. Naren a member of the Taxicab Bureau?

"A Yes."

MR. PRATT: That completes that portion, and that completes all of the material that we have from Plotsky.

THE COURT: Anything you gentlemen want to read?

MR. TURCHIN: Yes, if it please your Honor.

The first one is page 12, line 9:

"Q Just specifically with respect to 1964 and 1965 and 1966, did the Metropolitan Taxicab Board of Trade share any offices with Mr. George V. McIntyre?

"A No."

On page 145, line 8:

"Q Did you ever speak to anyone --"

THE COURT: I don't have any 145.

MR. WENTZEL: I am sorry. It's in the second volume.

THE COURT: I don't need it. Go ahead.

MR. TURCHIN: Page 145, line 8:

"Q Did you ever speak to anyone at Tremont Chevrolet or any representative of the Chevrolet Company about advertising in Taxi Weekly?

"A I don't recall. I don't think so.

"Q Well, did you?

"A I will say no.

"Q Did you ever state to any such representatives, that is, either of Tremont Chevrolet or the Chevrolet Company, that they shouldn't advertise in Taxi Weekly?

"A No.

"Q Or they should cut down their advertising in Taxi Weekly?

"A No.

"Q Did you know that any such statements were made by any other taxi fleet owners to the taxi suppliers or manufacturers?

"A No.

"Q Did you ever have any discussions with any other taxi fleet owners on this subject?

"A No.

"Q That they should get together and persuade manufacturers not to advertise in Taxi Weekly?

"A No."

eblm 181

THE COURT: All right. What other depositions do you have?

MR. WENTZEL: I have Mr. Naren, Mr. Suchman, Mr. Levine and Alfred J. Marks, Mr. Lefkowitz and Mr. Ulrich, and Mr. Wysinger; and maybe one I missed.

THE COURT: How long do you think that will all take?

MR. WENTZEL: It's taking longer than I thought.

THE COURT: It's going along very well.

I am going to ask you to start at 9:30. I think we have had enough of it for today. Let's convene promptly at 9:30. And the jury will retire now and I will speak to the lawyers again, please.

(The jury left the courtroom. Time noted: 4:30 p.m.)

(Discussion off the record.)

eblm 1

TAXI WEEKLY, INC., et ano

vs.

66 Civ. 2827

METROPOLITAN TAXICAB BOARD
OF TRADE, INC., et al.

New York, New York
July 10, 1975 - 9:30 a.m.

(Trial resumed.)

(In the robing room.)

(Discussion off the record.)

THE COURT: We have had a brief discussion, we started a discussion of the charges to the jury in an off-the-record talk this morning. Neither of the sides has given me a proposed charge specifically and uniquely directed to the Donnelly Act.

MR. WENTZEL: We have some being typed, your Honor, this morning.

THE COURT: Okay. But as I understand it, the parties are considering, and if they have arrived at this decision, we can put it on the record now.

MR. NESSEN: I haven't talked to other defense counsel.

THE COURT: Well, let's just talk about it and nobody is going to get bound up if they don't want to, but I gather that there is at least consideration being given to agreeing that, for the purposes of this case, the issues

eblm 2

about liability and damages would be the same under Sherman Act I as they would be under the Donnelly Act, excluding, of course, the Interstate Commerce problem.

Now, I don't want anybody to go further than they want to, but are we ready to agree to that or do you still want to consider it?

MR. NESSEN: I want to look at the Donnelly Act again, your Honor, before I resolve that.

MR. WENTZEL: Our research last night led us to that conclusion in some cases.

MR. NESSEN: Section 1?

MR. WENTZEL: That's right. So that the charge we drafted essentially says that.

THE COURT: Well, I think we will work towards that end. I would like to have by this evening some kind of an agreement from the lawyers, either in terms I have just stated or specifying exactly where the differences would be.

MR. NESSEN: And I would also like a clarification that there will be no charge on the common law, Cause of Action 3.

THE COURT: None has been submitted.

What do you say on that, Mr. Wentzel?

MR. WENTZEL: Quite frankly, if we don't have a case under the Sherman Act or the Donnelly Act, I wouldn't

eblm 3

think we would have it on the common law.

THE COURT: No charge has been submitted on Sherman Act II and I think we agreed yesterday that there would be no submission to the jury on Sherman Act questions.

Now, let's go to the Interstate Commerce point.

(Discussion off the record.)

(In open court, jury present.)

THE COURT: We are all very ashamed to have called you in at 9:30. Frankly, we got together about 9:15 or so, and I had asked the lawyers to come in and we had a lot of legal points to talk over and I for one completely forgot during our discussion, and I am very, very sorry but the only comfort I can give you is that we have certainly been discussing some crucial points, so all in all the time wasn't lost but I am sorry to have had you come in early.

Okay, let's go ahead.

Let me say, I think the lawyers are going to try to break up the deposition reading, but I will also say that the deposition is just as important as live testimony even though it may not seem to be as interesting, but every piece of the evidence is important and crucial so we all need to pay very close attention. If you want to stand up, just do anything you want to do so we keep alert and alive to all the evidence.

eblm 4

All right, Mr. Pratt.

MR. PRATT: The first deposition is from Gerald Naren, taken on July 21, 1967, and I am beginning at page 3, line 11. The questions are by Mr. Geller.

THE COURT: Give me the date again.

MR. PRATT: The date, your Honor, is July 21, 1969.

THE COURT: And you are starting where?

MR. PRATT: Page 3, line 11.

"Q Mr. Naren, what is your business?

"A Taxi fleet operator.

"Q Were you in the same business in 1965, 1965 and 1966?

"A Yes.

"Q Do you operate your business as an individual proprietor or do you do it through a corporation?

"A Through a corporation."

Turning to page 4 at line 6.

"Q What are your managing corporations if there are more than one, or what is the managing corporation if there is one?

"A EN Operating Corporation, EN Operating Corporation.

"Q Was that your operating corporation in 1964, 1965 and 1966?"

THE COURT: It's EN. I think you heard reference eblm 5 "Naren yesterday to ANN. This is a different name.

Okay, go ahead.

MR. PRATT: The answer to that question is:

"A Yes."

Continuing on page 5 at line 14.

"Q Now, are you a member of the Metropolitan Taxicab Board of Trade?

"A Correct.

"Q Are you a member as an individual or is it through your corporation, EN Operating Corporation?

"A Through my corporation.

"Q Were you, or was EN a member in 1964, 1965 and 1966?

"A Yes."

Then turning to page 8 at line 7.

"Q Were individuals other than members of the board of directors of the Metropolitan invited to meetings of the board while you were a director?

"A I believe so.

"Q Do you remember the names of any of those individuals who were so invited?

"A Well, the public relations man would usally be there.

"Q Who was that?

"Naren

"A McIntyre.

"Q Yes?

"A And the accountant would be there once in a while. Then Botwinick. Then they would bring in some individuals if it was on a current topic that we were discussing. They would have different individuals attending these meetings.

Turning to page 9 --

MR. TURCHIN: Can I read further on page 8? Line 21.

"Q Were there officials or representatives of the owner driver organizations at times, were they invited to the board meetings of Metropolitan?

"A I don't think so. I don't remember frankly."

MR. PRATT: Now on page 9, at line 20.

"Q Did you discuss the cancellation with your brother Harold?"

Your Honor, if I may state, a question on that page referred to the cancellation of Taxi Weekly.

THE COURT: Yes.

MR. PRATT:

"A Yes."

MR. TURCHIN: May I read on.

"Q Did you discuss it with Mr. Skull or Mr. Redner or both of them?

eblm 7 "Naren

"A No."

MR. PRATT: Page 21, line 11.

"Q Did you discuss it with Jack Plotsky?

"A No."

Turning to page 23, line 13.

"Q On July 14, when you canceled your subscription to Taxi Weekly, or you canceled EN Operating Corporation's subscription to Taxi Weekly, did you, on or about that date, before the cancellation, meet with any individuals to discuss the cancellation?"

Turning to line 9.

"A My brother.

"Q But with no other persons?

"A No.

"Q Were you aware that on or about that date there were other taxi fleet owners who were canceling their subscriptions?

"A No.

"Q Did you, in the years 1964, 1965 and 1966, or 1966, hear any rumor to the effect that a man named Morris Marken was in some way behind Mr. Peterman and Taxi Weekly?

"A No.

"Q You never heard that rumor?

"A No.

"Naren

"Q From whom did your taxicab owner corporations buy their taxicabs?

"A Future Motors.

"Q And this was so in 1964, 1965 and 1966?

"A Yes.

"Q Did you ever discuss with any official or representative or employee of Future Motors their subscription to Taxi Weekly?

"A No.

"Q Did you ever discuss with them their advertising in Taxi Weekly and whether they should cease their advertising in Taxi Weekly or cut it down in any way?

"A No.

"Q Did you ever discuss that subject with a man named Frank Zeiler?

"A No.

"Q Do you know who Frank Zeiler is?

"A Yes.

"Q Who do you know him to be?

"A He is a representative of Dodge Motor Corporation, Taxicab Division.

"Q Was he, in the years 1964 through 1966?

"A I believe so.

"Q Did you, from time to time, speak to him in these years?

"A Yes."

That's all that we have from the deposition of Mr. Naren.

MR. TURCHIN: May I continue on page 25, line 24.

"Q But you never discussed with him the subject of Dodge or Future Motors either stopping or cutting down their advertising in Taxi Weekly?

"A No.

"Q Did you ever discuss that subject with Harold Peterfreund?

"A No."

That's all.

THE COURT: All right.

MR. PRATT: Your Honor, the next deposition is that of Mr. Isidore Suchman. His deposition was taken on September 25, 1969, and the questions are by Mr. Geller, and I begin on page 3 at line 7.

"Q Mr. Suchman, what is your business?

"A I am in the taxicab business.

"Q Are you a taxicab fleet operator?

"A Yes.

"Q Do you operate through a business corporation?

"A Yes.

eblm 10 "Suchman

"Q Is it more than one corporation? Do you have more than one management corporation?

"A One management corporation.

"Q What is the name of that?

"A Columbia Operating Company, Inc."

Turning to page 4 at line 12.

"Q Did you have the same management corporation, Columbia, in 1964 to 1966?

"A Yes.

"Q Columbia at that time managed 159 and now they took on the additional seven cabs?'

THE COURT: Where are you now?

MR. PRATT: Page 4, line 12.

Turning to page 5, beginning at line 25.

"Q Is Columbia a member of the Metropolitan Taxicab Board of Trade?

"A Yes.

"Q Has it been since prior to 1964?

"A Yes.

"Q Do you hold some office in the Metropolitan?

"A I am on the board of directors.

"Q For how long have you been on that board?

"A Oh, many years. I don't recall how long.

"Q Since before 1964?

BEST COPY AVAILABLE

"Suchman

"A Yes."

Turning to page 7, line 12.

"Q Going back now to the period between 1964 and 1966, did you regularly attend meetings of the board of Metropolitan?

"A Yes."

I am now turning to page 112. This is line 17.

"Q Do you recall a conversation that you had in June 1966 where you and your brother Jesse and Mr. Peterman were present and you were discussing his newspaper, Taxi Weekly, in which you told Mr. Peterman that in your opinion Mr. Friedlander and Mr. Botwinick were the leaders of the organization, meaning the Metropolitan, prior to the time that Saul Peter came in?

"A I recall Mr. Peterman being at the office. What the conversation was I couldn't recall."

MR. TURCHIN: Your Honor, I object to that. It's not responsive.

THE COURT: I will overrule the objection.

MR. PRATT: Turning to page 12 at line 12.

"Q Was it an extended conversation that lasted at least half an hour?

"A I don't know how long it lasted but it was not a short conversation."

eblm 12 "Suchman

Skipping to line 21.

"Q Didn't the conversation revolve around the plight of Taxi Weekly and what could be done to perhaps save it from going out of existence?"

THE COURT: I am not going to permit that next answer.

MR. PRATT:

"Q That may be but I'm asking you what the conversation was about. You expressed an interest from your end, but wasn't that what the conversation was about, generally?

"A If I can recall, Mr. Peterman came around to see us and wanted to know what if anything could be done to come back into the industry.

"Q Did you tell him at that time or did your brother tell him to go see Hy Saul Peter?

"A If the conversation was as I recall, he would have told him to go see Hy Saul Peter, yes.

"Q When you say 'he' you mean your brother?

"A My brother or I would have told him to go see Hy Saul Peter."

Turning to page 21 at line 12.

"Q Did your management corporation, Columbia, subscribe at one time to Taxi Weekly, Mr. Peterman's newspaper?

"A Yes.

"Q Do you know for how many years it did?

"A I don't recall for how many years. It was quite a while.

"Q Did there come a time when you canceled the subscription?

"A Yes.

"Q Do you recall when that was?

"A At the time of the question of the rate increase.

"Q Was it in connection with that fare increase that you terminated the subscription?

"A That's correct.

"Q I show you a copy of a letter and ask you do you recognize that as the letter that one of your brothers sent?

"A That's mine.

"Q Is that yours?

"A Yes.

"Q You sent the original of that letter to Taxi Weekly to cancel the subscription?

"A Yes."

Skipping to line 22.

"Q Before you canceled the subscription on July 14, 1964 with whom did you speak about canceling?

"A My brothers.

"Suchman

"Q Anybody else?

"A No.

"Q Was that matter ever discussed at any meeting of the board of directors of the Metropolitan?

"A No.

"Q Was it ever discussed at any membership meeting?

"A Not that I recall.

"Q Was it ever discussed by you with any other fleet owners or representatives of fleet owners?

"A Maybe during the course of my conversation I may have told somebody on the telephone when we would speak with each other that I was canceling, or something like that.

"Q Did anybody tell you they were canceling before you canceled?

"A Not before I canceled, no.

"Q Did you know that other people were canceling it at or about the same time?

"A No. I subsequently found out later, some people canceled.

"Q Was there a particular issue of the Taxi Weekly that made you cancel the newspaper at that time?

"A I think the last few issues.

"Q What was in them that made you cancel?

"A It was not so much what was in them as what was not in them.

"Q What was it that was not in them?

"A The fact we were trying to get this rate increase and that the men were to receive the rate increase, that the dime would go to the men. He would get his commission on that and we offered to give four percent for the health and welfare fund, and I thought that the industry newspaper should explain that to the drivers who were reading it.

"Q Did Taxi Weekly not explain that?

"A Not to my satisfaction; no.

"Q Did they say that it was at least the proposal of the fleet owners to give the dime to the drivers? Did they report, in other words, did they report the position of the fleet owners, the official avowed position of the fleet owners?

"A Not to my satisfaction they didn't.

"Q Was it their reporting or their editorial policy that you disagreed with?

"A I would venture to say both."

Now turning to page 25 at line 12.

"Q Did you at that time know Jack Plotsky?

"A Yes, sure. I have known him for 20 years.

"Q Did you know him quite well in July of '64?

"A Yes.

"Suchman

"Q Did you know that he canceled on the same day? Were you aware that he canceled on the same day?

"A No, I was not aware of that.

"Q Did you, at the time, know Philip Rosenblatt?

"A Yes, I did know him.

"Q Did you know him well at that time?

"A Yes.

"Q Did you know that or were you aware that he canceled on the same day, July 14, 1964?

"A No.

"Q Did you know Gerald Naren?

"A Yes.

"Q Did you know him well?

"A Yes.

"Q Did you know that, or were you aware that he canceled on the same day?

"A No.

"Q Did you meet with any of these men that I just named on that day?

"A No.

"Q Did you meet with them in the prior week?

"A I don't recall."

Turning to page 37 at line 19.

"Q After you canceled your subscription to Taxi

eblm 17 "Suchman

Weekly, did you subscribe to The Hackman?

"A Is that the new paper that came? If it was the new paper, yes, that's right.

"Q What do you know about the origin of The Hackman, how it came to be published?

"A I haven't the slightest idea how it came into being. All I know is that I was told -- Mr. McIntyre, I think, said he was having a new paper, and I said I would subscribe to it.

"Q Who was Mr. McIntyre?

"A He used to do public relations for the Metropolitan Taxicab Board of Trade.

"Q When did he speak to you about it?

"A I don't recall.

"Q Where was that?

"A I haven't the slightest idea.

"Q Was that to you personally or in a group?

"A I think it was to me personally.

"Q Did this come up at a board of directors meeting of the Metropolitan?

"A Not that I can recall.

"Q Was The Hackman published because the board of directors of Metropolitan or any group within Metropolitan wanted to have a paper to compete with Taxi Weekly?

"Suchman

"A I wouldn't say Metropolitan wanted a paper, but the operators felt they should have a paper."

On page 41 at line 18.

"Q Will you tell me all that you recall about your conversation with McIntyre, the one you testified to, about The Hackman.

"A All I can recall is that he told me that a new paper was either coming out or being published, would I want to subscribe to it."

MR. TURCHIN Could I continue reading on page 39.

"Q To your knowledge did any of the operators get together and discuss that point with Mr. McIntyre before he started The Hackman?

"A Not to my knowledge."

MR. PRATT: On page 41 at line 18.

"Q Will you tell me all that you recall about your conversation with McIntyre, the one that you were testifying to about The Hackman.

"A All I can recall is that he told me that a new paper was either coming out or being published, would I want to subscribe to it, and I said yes.

"Q Did he tell you that that was a newspaper that would represent the views of the fleet owners?

"A Yes."

"Suchman

Turning to page 44 at line 21.

"Q Did you know Morris Marken?

"A Yes.

"Q Was it your opinion in 1964, during that period of time, that Mr. Marken had vowed to ruin the taxicab industry in New York City?

"A I can go back before that, yes. The answer to the question is yes.

"Q As far as you knew, was that the opinion of your brother?

"A Yes.

"Q What was the reason that you held that opinion? Had you heard Marken say that or did you know that from somebody else?

"A I had heard Marken say it. I have known Marken for over 20 years and I know his opinions, that he would eventually put the operators who didn't buy his cars out of business.

"Q Is that an opinion that was generally held among the fleet owners in New York City?

"A I would venture to say yes.

"Q Was that held in the years '64 to '66 generally by the fleet owners in New York City?

"A Yes."

eblm 20 "Suchman

Turning to page 49 at line 11.

"Q In the conversation you had with Mr. Peterman in June 1966 did you or your brother tell him that you thought the fleet owners could sit down with Peterman and make peace with him just like they made peace with the union?

"A It may have happened that way, yes.

"Q Was it your opinion that Hy Saul Peter, the executive director of Metropolitan, was the man that Peterman should speak to in order for Peterman and the fleet owners to make peace with each other?

"A I don't recall correctly but I would have recommended that he see Hy Saul Peter to initiate --

"Q For that purpose?

"A That's right."

And that's all that we have from the deposition of Mr. Suchman.

MR. TURCHIN: May I read from page 51, line 19.

"Q Who did you deal with in General Motors?

"A General sales manager in New York County.

"Q What was his name?

"A Jim Hill, at the time.

"Q What office did he operate from?

"A Radio City, Rockefeller Center.

"Q Did you ever discuss advertising with him?

"A No."

MR. PRATT: The next deposition is of Leonard Schaffran. It was taken on October 7, 1969, and the questions are by Mr. Geller. Beginning on page 3 at line 4.

"Q Mr. Schaffran, what is your business?

"A Taxicab fleet operation.

"Q What is the name of the corporation through which you operate your cabs?

"A Jofan Maintenance."

On page 14 at line 3.

"Q Wasn't Mr. Botwinick a leading figure in the Metropolitan Taxi Board of Trade in the years 1964 to 66?

"A I would consider him a leading figure."

Then on page 31 at line 15.

"Q Did your company subscribe to Taxi Weekly in the year 1964?

"A Yes.

"Q How long had it subscribed before that year to Taxi Weekly?

"A By number of years, I don't remember how long.

"Q Was it more than one year?

"A Yes.

"Q More than two years?

"A Yes.

"Q Was it more than five years?

"A I think so.

"Q Did you know Abraham Wysinger?

"A Yes.

"Q What was his relation to Taxi Weekly as far as you knew about it?

"A I knew he was the only principal of Taxi Weekly.

"Q Did that hold true at all times?

"A Yes.

"Q Did you know Mr. Peterman here?

"A Did I know him?

"Q Yes, in the year 1964.

"A I knew of him.

"Q Had you not met him in the year 1964?

"A I had seen him. I had met him.

"Q What did you know of his position in the Taxi Weekly?

"A I thought he was an employee.

"Q That held true for all of 1964?

"A Yes.

"Q Did you know of the time when he became the owner of Taxi Weekly?

"A I didn't know.

"Q Did there come a time, as far as you knew, when

Mr. Wysinger left that newspaper?

"A I wasn't aware of it.

"Q Did there come a time when your company, Jofan, canceled its subscription to Taxi Weekly?

"A Yes.

"Q Were you the one that canceled it for your company?

"A Yes.

"Q Were you the one that canceled it for your company?

"A Yes.

"Q Did you do so in writing or orally?

"A Orally.

"Q When you did so, to whom did you speak?

"A I don't remember.

"Q Did you speak to Mr. Peterman?

"A I don't remember.

"Q Did you do it on the telephone or in person?

"A On the telephone.

"Q What was the occasion for your doing it? What were the facts and circumstances surrounding your canceling your subscription to Taxi Weekly? How did you come to do it?

"A I was no longer happy with what I was reading in the paper and I didn't feel like supporting it.

"Q Why were you no longer happy?

"A Because I expected them to print the proper facts and complete facts regarding the ten-cent increase and when my drivers read the paper, when it was published, and when they came out with a million questions and started questioning me as to what we are doing with the ten cents, instead of the fleets explaining it in the paper which was supposed to make them --"

MR. TURCHIN Excuse me. The facts, not the fleets.

MR. PRATT: "Instead of the facts, explaining --"

THE COURT: Read that again.

MR. PRATT: "Because I expected them to print the proper facts and complete facts regarding the ten-cent increase, and when my drivers read the paper, when it was published, and when they came out with a million questions and started questioning me as to what we are doing with the ten cents, instead of the facts explaining it in the paper, which were supposed to make them aware of all these facts, I figured what do I got to support this newspaper for if I got --"

MR. TURCHIN: This paper for.

MR. PRATT: "This paper for if I got to go out there now and I have got to be the news agent to all these men.

"Q Did you read the paper at the time during the discussion?

"A I did.

"Q During the discussion of the fare increase?

"A I did.

"Q Did you, yourself, read something there that indicated that the paper was not publishing all the facts with respect to the Metropolitan Taxicab Board of Trade position on the fare increases?

"A Of course.

"Q Is that why you canceled your subscription?

"A Yes.

"Q Why did you cancel it on the particular day that you canceled it? Was there something that happened that day?

"A Yes. A group of drivers gave me verbal arguments in the drivers' room regarding the ten cents and I got aggravated with the fact that they didn't have their explanation in print, and I had to stand there and answer for everything with all the men as they were coming in to work, and I said why do I need this for? And what was I paying them for? And I went in and canceled.

"Q With respect to this discussion that you had with the drivers, on what shift was that? Was that a night shift or day shift, do you recall?

"A I don't remember.

"Schaffran

"Q You do remember a discussion though with drivers?

"A Yes.

"Q On the spot after that discussion did you call up --

"A No.

"Q -- Taxi Weekly?

"A Not on the spot.

"Q Was it during that day?

"A This discussion with the drivers had been going on a number of days after this article had been printed and I reached the point of aggravation where I went to the phone and canceled.

"Q Was there a specific article that appeared in a specific issue of Taxi Weekly that started all this argument with the drivers?

"A Yes.

"Q It wasn't on a particular day when you had one argument with drivers when you picked up the phone and called?

"A No.

"Q Is that what you are saying?

"A That's right."

Then on page 37 at line 5.

"Q Was the article that you were referring to an editorial or was it a news article?

eblm 27 "Schaffran

"A It was a news article, I believe, or an editorial. I don't remember. It's a little too far back now."

Turning to page 41 at line 17.

"Q Do you remember particularly what was in the article that you said brought about this argument between you and the drivers?

"A It was what wasn't in the article that brought the argument about.

"Q What was it that wasn't in the article?

"A A complete explanation of the facts.

"Q What was it that wasn't in the article?

"A A complete explanation of the facts.

"Q Of the facts relating to what?

"A The ten-cent increase that we were getting from the City of New York.

"Q What was it in connection with the ten-cent increase that wasn't in the article?

"A How the money was going to be used so that the men would understand that we weren't going to get a silver lining in our pockets, that the money was going to be used for their benefit, which were important facts for the welfare and operation of our business."

And that is all we have from Mr. Schaffran's deposition.

MR. TURCHIN: On page 57, your Honor, on line 19, this refers to purchasing c[illegible]s.

"Q With whom did you deal in New York?

"A Henry Weis.

"Q Did you ever discuss with Mr. Weis where he advertised?

"A No.

"Q Did you ever discuss his advertising in Taxi Weekly?

"A I never bought his automobile through an advertisement.

"Q I'm not asking you whether you bought his automobile through an advertisement. I am just asking you whether you discussed with him whether or not he should advertise or King Ford should advertise in Taxi Weekly?

"A Never discussed it."

On the bottom of page 58, line 23.

"Q With whom did you deal in Future Motors?

"A Harold Peterfreund.

"Q Did you ever discuss with Peterfreund whether or not he should advertise in Taxi Weekly?

"A Never.

"Q Did you ever ask either Weis or Peterfreund, whether directly or indirectly, to discontinue advertising in Taxi Weekly?

"A Never."

On page 61, referring again to King Motors. This is line 12.

"Q At King, I mean, did you deal with Bob Weis at King Ford as well as with his father?

"A Yes.

"Q Did you ever speak to him about advertising in Taxi Weekly?

"A Never.

"Q And you never told him or urged him to discontinue his advertising in Taxi Weekly?

"A Never."

That's all I have.

MR. WENTZEL: At this time I would like to call Mr. Kobak.

eba 1

Weekly

Taxicab

JAMES B. KOBAK, called as a witness by plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Kobak, would you state your address and your age, please?

A My address is 774 Hollow Tree Ridge Road, Darien, Connecticut, and I am 54 years old.

Q What is your occupation, sir?

A I am a consultant.

Q In what field are you a consultant?

A In general management, but probably 30 per cent of it in the magazine, book publishing and allied fields.

Q Are you employed by any company?

A I am employed by a company called James B. Kobak, Inc.

Q How long have you -- what is your position with that organization?

A Surprisingly, I am the president of it.

Q And how long have you held that position?

A About four and a half years.

Q Prior to that time what was your employment?

A Prior to that time I was in the public accounting business for 25 years where I was the managing partner of J. K. Lasser & Company, which is an international public accounting firm.

Q What particular functions did you perform with J. K. Lasser?

A Well, I was the boss, for one thing, but besides that I was in charge specifically of accounting tax consulting work with people in the publishing industry, which was one of the strongest points of J. K. Lasser's practice.

Q How long did you hold such a position with J. K. Lasser?

A Well, in that kind of work, for the whole period of 25 years, basically.

Q Would you describe your educational background?

A I am a graduate of Harvard College, took my accounting at Pace College at night, became a CPA in 1949 in the State of New York.

What more would you like?

THE COURT: Wait a minute.

When did you get out of Harvard?

THE WITNESS: '42.

THE COURT: Whar did you do at Pace College?

THE WITNESS: At Pace College I took graduate courses in accounting.

THE COURT: What did you study at Harvard?

THE WITNESS: At Harvard I was a government major. At Harvard they don't teach you specific things, as you know, so you have to go and learn something after you get out.

THE COURT: And then you became a CPA when?

THE WITNESS: In 1949.

BY MR. WENTZEL:

Q What jurisdictions had you received a certification as a public accountant in?

A In New York State, the State of Louisiana, and interestingly enough, South Africa, which I have never visited, I might add.

Q In your capacities with J. K. Lasser and your present company, have you had occasion to make evaluations of publishing companies?

A I certainly have. In fact, in preparation for this affair I added up the number of formal evaluations, I must call them formal because somebody will always be liable to come in and say what's this worth and so forth, but that is not a formal evaluation

From 1961 through November 30th of '74, which is when we were first supposed to do this, I valued 70 different public properties where a sale resulted, and during the same period I valued 76 where a sale did not result.

You might value a property which -- where the parties couldn't get together on the price. Sometimes you value them for estate or gift tax purposes, and sometimes as an expert witness, as in this case, and sometimes for a buy-sell agreement between the people who own it, if they were going to sell it to each other.

Since that there have been 17 more evaluations between then and now.

Q Now, you mentioned valuations which you have made which have actually resulted in sales. Could you give us some examples of those?

A I have a list of them here. Some of them would be papers which you would know and some would be a lot of those that you had never heard of. For instance, Saturday Review, Harper's, Golf Digest would be some of those that you might recognize the names of. You might not recognize the names of Automotive Retaiers, which goes to stores like the Pep Boys -- I have a complete list of these if you want them.

THE COURT: Let me just get some notes as you talk.

After Golf Digest what was it?

THE WITNESS: Then I said that some of the smaller properties would be some you would not have heard of, such as Automotive Retailer, which is a magazine that goes to the automotive stores, such as the Pep Boys, and I can't think of some of the others. Candy and Snack Industry, Ice Cream Trade Journal. Every industry has its own business publication. Fur Breeder. There are some others, such as Riverdale Press, which is a small newspaper serving Riverdale up in New York. The Lakeville Journal, which is a newspaper serving Buckley country up in Connecticut. Long Island Commercial Review, which is a newspaper that serves Long Island business interests. Variety, which you are all familiar with. Stromberg Publishing, which has a chain of weekly newspapers around Baltimore.

I merely mention these to show the variety of different types of things.

MR. NESSEN: We will concede that he has had quite a bit of variety, your Honor.

Q Mr. Kobak, in the course of these evaluations which you have made which have resulted in sales, have you focused particularly either on buyers or sellers in that respect?

A I have worked for the buyer and in some cases for the seller, and in a few instances for both where they said, "We will agree to reach a decision based on the price that you give us," which is a kind of interesting position.

MR. NESSEN: Can we strike some of the volunteering, your Honor?

THE COURT: Oh, I don't think so. Let's go ahead.

Q Now, you mentioned that you have made valuations which have not resulted in sales. Can you give us a few examples of those?

A The Saturday Evening Post, I tried to sell, and the other Curtis magazines, for three or four years when they were in such trouble, but was never successful. There are a number of others which I -- Miller & Fink is a company that publishes a magazine called Patient Care for doctors that I can recall for a buy-sell agreement.

I valued Sunsetting magazine out on the

West Coast for estate tax purposes. And there is a string more of them. If you want me to look them up, I will.

THE COURT: I don't think we have to do that.

Q Have you made any other types of valuations and studies relating to the publishing field?

A Well, for many years while I was at J. K. Lasser, Lasser developed the statistical reports which were used by the various associations in the publishing field.

There are several associations: The American Business Press covers business papers; the Magazine Publishers Association covers general consumer magazines; the Association of American Publishers covers the book publishing industry; and for all three of these groups, our firm under my direction did cost analyses so publishers could compare their income and cost ratios against those of other publishers.

We also did what we call manpower studies where we could compare the salary levels of people in different positions between different companies so that people would know whether they were in the same ball park or not.

eba 8 Kobak-direct

Q Have you ever done studies relating to new publications?

A I have been involved in the launching of, oh, I would say, 25 new publications and the nonlaunching of probably 200; almost virtually every one who starts a new publication these days comes to me. I would say two-thirds. I shouldn't say virtually everyone.

MR. NESSEN: I will object to this kind of testimony, your Honor. I think it is irrelevant.

THE COURT: Overruled.

Q Go ahead.

A And in doing that, I help them launch a new magazine basically,because the average person never starts anything new in his life, and a few people may have started it once or twice, or something of that kind, and there are definite techniques as to how you start a new venture, having been through it several hundred times.

THE COURT: I think it is of interest to me that people come to you about starting new ventures but I don't think we have to pursue it any further than that.

Okay, Mr. Wentzel.

Q Are you a member of any professional associations?

A Well, I am a member of the American Institute of Certified Public Accounts, the New York State Society of Certified Public Accounts, the Accountants Club of America.

Q Are you a member of any associations within the publishing industry?

A No, I'm not.

Q Do you hold any directorships of any companies other than your own?

A I hold directorships in a number of companies including Miller & Fink that I mentioned a minute ago.

THE COURT: What is Miller & Fink?

THE WITNESS: Miller & Fink is a publishing company that publishes a magazine called Patient Care, which goes to doctors.

I am chairman of the Magazine Committee of the Boy Scouts of America, which publishes Boys Life, Scouting and Exploring, I believe are the magazines.

I am on the board of directors of a magazine called AD, which is a religious magzzine put out by the Presbyterian Church and the United Church of Christ.

THE COURT: You say you are on the board of that?

THE WITNESS: Yes. I am the treasurer of that magazine.

Q Have you written any articles or books dealing with the subject of publishing business valuations or financing?

A Well, I have written many articles on the publishing business, and I write an article each issue of Folio, which is a magazine for magazine publishers.

One article in that Folio series was one on how do you value a magazine which pretty well gives my theory.

Q Have you had occasion to act as a speaker before publishing organizations?

A I guess I speak before publishing organizations five or six times a year.

Q Now, in giving these examples of your activities within the publishing field I gather from what you said that there are other examples and so forth.

A Yes.

MR. WENTZEL: I want to mark an exhibit but I don't know what the next number is.

MR. PRATT: We have gone beyond 43.

(Plaintiffs' Exhibit 100 was marked for identification.)

Q Mr. Kobak, I show you Plaintiffs' Exhibit 100 for identification and ask you if you prepared those lists that are contained there?

A Yes, I did.

MR. WENTZEL: I offer this in evidence, your Honor.

THE COURT: Any objection to 100?

MR. NESSEN: Yes, your Honor.

THE COURT: Can I see it?

(Pause.)

THE COURT: I will overrule the objection.

MR. DINKES: Can I see it also?

THE COURT: You were welcome to come up here with the others.

(Pause.)

(Discussion at the bench off the record.)

(Plaintiff's Exhibit 101 was marked for identification.)

THE COURT: I will sustain the objection to 101 and I will admit 100.

Let's go.

MR. WENTZEL: May I just read the title

of these to the jury, your Honor.

THE COURT: Surely.

(Mr. Wentzel read from Plaintiffs' Exhibit 100 to the jury.)

BY MR. WENTZEL:

Q Mr. Kobak, would you describe how you go about valuing a publishing business?

A Yes. I will give you the general outline. Obviously it is a little complex in some cases.

I am talking now about a valuation based on the going-concern value of a company, as if someone were going to buy it.

MR. NESSEN: Your Honor, I believe this is reading from something and I do think that ought to be marked.

THE COURT: All right. Let's mark it. Mark it the next defendants' exhibit.

Well, let's call it a plaintiffs' exhibit, 102.

(Plaintiffs' Exhibit 102 was marked for identification.)

THE COURT: Let's try to keep on with it. Can you keep on for a minute without referring to that?

MR. NESSEN: I will just be a minute, youur Honor.

We will take a look at it just before cross examination, your Honor.

THE COURT: All right.

A In valuing a publication or virtually any other business, for that matter, you normally start by trying to determine what the general public would pay for a company in that business. This means you start out by trying to determine what values are placed on public companies that are traded over the stock exchange, or over-the-counter, or some place of that kind.

From that point there are certain weaknesses in saying, "Well, okay, if they sell for X times earnings, to apply that to any other particular company doesn't really work completely because most of the public companies have other activities. They may have a printing plant or they may publish books and magazines or both, or something of this kind. And then of course each magazine is a very unique thing. There are no two that are alike.

The public markets fluctuate sometimes without reason, it seems, and they fluctuate much more than the value of a specific property might which is publicly held.

Often the public company will sell for a much larger multiple of earnings than a private company, although --

THE COURT: I will tell you what, I thinkyyou better define some terms: Multiple of earnings and all, even those of you who have heard about it, maybe we ought to focus a little more carefully on that.

What do you mean by that? X times earnings.

THE WITNESS: Normally in determining a value for a company that's profitable at least you try to find out what the earnings of the company might be according to its records, and then multiply those earnings by a certain number, which might be five, six, seven, eight, fifteen, whatever it may be, and in that way you determine what we call a price-earnings ratio.

THE COURT: Like what?

THE WITNESS: Well, if a company were making $25,000 a year and you said, "My price-earnings ratio would be 10 times," you then would say the price of the company is $250,000.

THE COURT: When you are talking about a stock, when you talk about price-earnings ratio, what are you talking about? You know too much about this.

THE WITNESS: Maybe you can't understand my questionand maybe you all know this, but in case you don't, let's just state it clearly. If you own stock in Gdneral Motors or McGraw-Hill, and they may have certain millions of dollars of total earnings after profits, after taxes and everything else, you can divide that by the number of shares outstanding and come out to an earning, say, of $2 per share.

Now, if you look in the paper that morning and you find that the stock is selling for $20 per share, then obviously 20 is 10 times the earnings, so people talk about the multiple, don't they, of being ten times, or they talk about the price-earnings ratio 10 times.

MR. NESSEN: Your Honor, you are not suggesting that that is the proper method?

THE COURT: Of course not. And I don't think anybody in their right mind would have even thought it. It's dangerous to say anything.

Let's go.

THE WITNESS: I appreciate your help.

A As I say, what the public companies sell for is not completely indicative of what a private company would sell for. But it is a starting point. From that point we try to obtain specific facts about the particular company: it's history, its financial position, how strong is it, the financial results, what kind of profits has it been able to develop, what competition does it have against it, how good are the people who are running it, what is the future potential of the field, and things of this kind. In other words, you are really trying to find out what's going on in this business and what might happen in the future.

To be even more specific, we normally try to develop earnings figures for five past years to give us an idea of what most recent earnings have been and what the trends might have been in the business.

Almost invariably, after we get these numbers, we have to make adjustments to them because there is usually something abnormal either in an income way or an expense way.

If a company has moved, for instance, it might, you might have to take the moving expenses out of the expenses because they are not normal. If there

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were a strike, it is an abnormal event. If some of the salaries were abnormally high or low, you might make an adjustment.

When you finally arrive at what you think are the correct earnings for the company, then you try to develop a price-earnings multiple as we were talking about that would apply to this company, and in developing that multiple we would start with the base multiple of what public companies are selling for and adjust from there with major different types of factors. Maybe our field is growing more than the public companies might be. The field may not be very attractive to certain people so that you might not have as many sellers.

The size of the operation is important.

The competitive position is important?

The quality of the management is important.

The earnings potential is important.

And things of this kind, which would differentiate it from the normal value businesses in that particular field.

When we finally reach a figure for the value of the earnings of the business, we then add or subtract. If there is a lot of cash around the company that isn't being used, we would add that to the figure because that would really be, if you were buying the business, an exchange of dollars. I will pay you $100,000 for the $100,000 that's sitting in the till.

Now, this is obviously a long, difficult, involved and technical problem when you do this and you have to do it separately for each individual company that you value.

Q Mr. Kobak, have you made an analysis of the going concern value of Taxi Weekly, Inc.?

A Yes.

Q As of June, 1964?

A Yes, I have.

Q Do you have an opinion as to the going concern value of Taxi Weekly, Inc. as of July 1, 1964?

A Yes, I do.

MR. NESSEN: I will object to this. No foundation has been laid as yet.

THE COURT: Overruled.

Q Would you state what that opinion is, please?

THE COURT: As of what date?

MR. WENTZEL: As of the beginning of July, 1964.

A In my opinion, the Taxi Weekly, Inc. was worth approximately $250,000 on a going-concern basis at the present time.

Q Would you tell us how you arrived at that figure?

A I'm going to have to go through a number of steps to explain that. May I do that?

Q Yes.

A The first starting point I used was to examine the prices of public traded securities in the publishing field, and fortunately my old firm, every six months, had developed these figures for use with our clients, so that we have them for public companies first which were primarily in the magazine business, and second, for those that were primarily in the book publishing and other publishing businesses.

At that time the price earnings ratio --

THE COURT: Wait a minute. You are going to give us, I take it, averages, or something like that?

THE WITNESS: I am going to give you specific companies and averages. I'm not going to go through this whole sheet.

THE COURT: I just wanted to know what you were going to do.

MR. NESSEN: I will object to specific companies, your Honor, in line with the discussion that we had before in this case.

THE COURT: Well, I think this is a little different. I will overrule that objection.

I just want to know, you've got two categories within this publishing field, right?

THE WITNESS: Correct.

THE COURT: And what are the two categories?

THE WITNESS: The first is those companies which are primarily magazine publishers.

THE COURT: And?

THE WITNESS: And second are those companies which are primarily book publishers and publishers of other types of services and things of that kind.

THE COURT: Okay. Go ahead.

MR. DINKES: If your Honor please, I thought we were dealing with a newspaper here.

THE COURT: It is not the time for comments to the jury what you think or don't think.

MR. DINKES: I object to the witness testifying about books and magazines when we are talking about a newspaper.

THE COURT: Overruled.

A The magazine group had average earnings, had an average price-earnings ratio at June 30, 1964, somewhat above 16 times earnings.

The book publishing group was in the neighborhood of 20 times earnings.

MR. NESSEN: I move to strike that last part, your Honor. Could we mark what the witness is looking at?

THE COURT: Yes. Certainly.

MR. WENTZEL: I would be happy to mark any of these documents that the witness is referring to.

(Discussion at the bench off the record.)

(Plaintiffs' Exhibit 103 was marked for identification.)

(At the bench.)

(In open court.)

BY MR. WENTZEL:

Q Would you continue, please, Mr. Kobak.

A Yes.

Now, I am not going to go into detail on all these companies. I merely want to indicate that my starting point in this case was the magazine publishers were selling for something over 16 times earnings, and that is my starting point.

MR. NESSEN: Your Honor, in viewof that testimony, I renew the motion.

THE COURT: Well, can you consider the ratio for book publishers?

THE WITNESS: You considered it only to -- in the first place, many of these companies publish both so it is not quite that simple. I considered it only to be sure that I was in the right ball park, that they weren't selling for something completely different.

THE COURT: All right. Motion denied.

A Now, from that point --

THE COURT: When you say ball park, I take it you are really telling us that you, for comparative purposes, the book publisher with a multiple

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of 20 times, you would not consider very comparable to Taxi Weekly, right?

THE WITNESS: That's correct.

THE COURT: Okay.

A From that point I worked, I made adjustments to the operating statement of Taxi Weekly. And I wonder, I have some sheets here which I might follow through with the jury which might make it easier to show how I made my calculations.

MR. WENTZEL: Your Honor, we thought about putting it on the blackboard or how else to do it.

THE COURT: Well, why don't you do this: let's take a short break now and then you show these materials to the defense counsel and see if you can work out a format for illustrating this.

Okay?

MR. WENTZEL: Fine.

(Recess.)

(Jury present.)

THE COURT: Ladies and gentlemen, in connection with Mr. Kobak's testimony, Mr. Wentzel will give to you some sheets of paper which you can use in following the testimony.

Now, some of the first page is sliced off because Mr. Wentzel put down two sets of figures for 1960 and 1961 which we have agreed don't need to included there, and I guess there are some things crossed out on the second page.

There is another reference you will see to something about normal officers' salaries. There is a very strongly disputed issue here about whether the actual salaries taken out by the officers amounting to certain figures you will hear about, whether those could properly be adjusted to some lower figure in considering the question of profits.

The only thing I want -- that will all be explained to you -- the only thing I want to caution you about is this: when you see the figure for so-called normal officers' salaries on that sheet, that is simply Mr. Kobak's testimony, and by giving you that document it doesn't become a fact, it is a disputed issue, and you will hear cross examination on that and

I'm sure you will hear testimony to the contrary. So that is in a somewhat special category on that document.

Okay, Mr. Wentzel.

BY MR. WENTZEL:

Q Mr. Kobak, would you continue with your analysis as to how you arrived at your opinion as to the going-concern value of Taxi Weekly?

A Yes. I prepared these sheets because I thought it would be easier for everyone to be looking at something rather than just listening to numbers which are very hard to follow when you are not looking at something.

The figures here for the years ended March 31, '64, '63 and '62 show gross revenue, printing and paper, other costs, and profit before officers' salaries. Now, these figures up to that point, the profit before officers' salaries, are exactly the way they show on the audit reports of the company.

On the company books this company was operated as what is called a sub-Chapter S corporation, which is a tax method of having owners of small businesses avoid being taxed twice on their income. In other words, the corporation might be taxed and then when they took dividends out they would be taxed again on the dividends personally.

Therefore, when you have a sub-Chapter S corporation the practice is for the owners to take virtually all the profits out of the business each year.

MR. NESSEN: I object to that, your Honor. I don't think that's proper nor is it true.

THE COURT: Well, you have to put in your side. Overruled.

A On the audit reports, which I do not know whether you have seen or not, these figures amount to some $40 to $55 thousand a year. These are called officer's salaries and profit distributions, I believe.

In my opinion --

MR. NESSEN: Your Honor, I'm going to object to this whole line on the ground that the plaintiff is bound by the Internal Revenue Service tax returns here.

THE COURT: I will overrule that objection.

A As I said earlier, in almost every valuation you make adjustments of certain figures because they are abnormal.

In my opinion, a publisher could have been hired to replace Mr. Peterman at that time for $15,000. I base that on my knowledge of the industry, and also on some industry surveys of salaries that my firm happened to make at the time.

I wonder if I should introduce those copies of the pertinent pages as evidence, your Honor.

THE COURT: Well, Mr. Wentzel, you take charge of that.

Q Do you have those studies which you say were performed at the time?

A I have certain pages from them. I didn't bring the whole study.

In 19 --

MR DINKES: Your Honor, I object to this.

THE COURT: I don't even know what he has.

MR. DINKES: I think for him to relate to studies of outside -- that's not his opinion; it's somebody else's opinion. We are only interested in his opinion today.

THE WITNESS: I beg your pardon.

MR. NESSEN: May I be heard, your Honor? Could we find out what we are talking about?

THE COURT: He is referring to -- let's

have the documents marked and offered and then we will hear what the objections are.

THE WITNESS: I have pages from three --

MR. DINKES: If your Honor please, before he tells us what they are, in case they are not admissible, can we look at them.

MR. NESSEN: They are not going to be admitted, are they? I don't think they are being

(Plaintiffs' Exhibits 105 through 107 were marked for identification.)

x

MR. NESSEN: These are from the manpower studies for what years, Mr. Wentzel?

BY MR. WENTZEL:

Q Let me show you --

MR. NESSEN: Before you, because I have one objection. The first one is that you, in your papers, only said he was going to rely on two of these, not three of these.

(Discussion at the bench off the record.)

VOIR DIRE EXAMINATION

BY MR. NESSEN:

Q Mr. Kobak, I show you 107 for identification, which says "1965 Manpower Study." Do you see it on the top of the page?

A Yes, sir.

Q Where is the original, the whole book of that?

A That one I believe we gave you this morning.

Q No, you gave us the 1966.

A Well, '66 covering salaries for the year 1965.

Q Is that correct?

A That's correct.

Q And where did you get it, this 1966 manpower survey?

A I had a copy of that.

Q And is that how you photostated it?

A Yes.

Q The exhibit before you?

A Yes.

Q And the earlier exhibit that we had?

A I believe so.

Q And you photostated it?

A Yes.

Q And where did you photostat it?

A What do you mean?

Q Where?

A Where?

Q Yes, where, where did you have it photostated?

A In my office.

Q In Darien, Connecticut?

A Yes.

Q Wasn't that true of of the 1962?

A No.

Q You photostated that some place?

A I didn't photostat it.

Q How did you get hold of that?

A My partner asked the American Business Press for a photostat of that page, of the 1962 study.

Q Now, when you -- you gave an opinion back in November of 10 times earnings, do you recall that, back in 1964?

A Yes.

Q You didn't use either one of these exhibits, did you, at this time, the material?

A I didn't use them?

Q Yes, you didn't use them. You didn't look at them when you made your opinion?

A Certainly I did.

Q You did?

A Certainly.

Q Did you tell that to counsel?

A I don't recall.

THE COURT: What occasion was it? You are talking about what exhibits?

MR. NESSEN: I am talking about Exhibits 105 and 107.

THE COURT: All right. Now, what was the occasion of giving? Was he deposed or what are you talking about.

Q You were asked by counsel back in November of 1964 on the documents that you used to arrive at that 10 times earnings figure you have given us, is that correct?

A I don't really recall at this moment.

THE COURT: Maybe I missed something. You are talking about a deposition?

MR. NESSEN: No.

THE COURT: What was the occasion?

MR. NESSEN: The occasion was they were

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about to tell us what documents they relied on.

THE COURT: On what occasion? Was there a meeting or a conference or what?

BY MR. NESSEN:

Q I assume -- let's put it this way: Last November did your counsel, did the counsel for the plaintiff here, ask you what earnings multiple you would use?

A Yes.

Q And did he ask you, did he tell you that he must answer an interrogatory?

A I believe these -- are these the interrogatories that you sent?

Q Yes.

A Yes, he sent me a copy of it.

Q And you yourself gave him the information on what you relied on, isn't that correct?

A I would imagine so, yes.

Q And you told him that you relied on pages from 1962 and 1965 associate business publications?

A Correct.

Q Is that correct?

A Correct.

Q And you say you didn't have the entire

1962 book, did you?

A That's correct.

Q You just had photostats of it?

A One page, that's right.

Q Now, at that time, when you yourself answered these interrogatories, or would make answer to these interrogatories, did you look at, did you have in your possession, Exhibits 105 and 107?

A 107 comes from the '65 book, so I did have that one in my possession.

Q And you didn't tell that to counsel, did you, that you relied on it?

A I don't recall. 105 I found last week.

Q So 105 you didn't rely on?

A That was in the dead storage files.

Q Didn't you tell me a minute ago that you had both of these before?

A No, I don't believe I did.

THE COURT: You did, but is it true or isn't it? Did you have those back in November, both those sheets, or didn't you?

A 107 I had.

105 I found last week going through my old files when we were getting close to this thing.

THE COURT: Where does that leave us, Mr. Nessen?

MR. NESSEN: Well, it was with respect to 107, it's a deliberate omission, or an inexcusable omission from the answers to interrogatories.

THE COURT: The answer simply says: "Pages from 1962 and 1965 Associated Business Publications' manpower reports showing salaries of publishers, copies enclosed."

Now, I take it what you are telling me is that you got the two pages in 106, but you never got the page that's 107?

MR. NESSEN: Correct.

THE COURT: Okay. I will preclude reference to 107.

MR. NESSEN: And 105, your Honor, is a latter day --

THE COURT: 105 and 106 can be used. All right, let's go.

Let's have the jury in.

(Jury present.)

DIRECT EXAMINATION CONTINUED

BY MR. WENTZEL:

Q Mr. Kobak, I believe you were at the point when you were discussing the normal officers' salaries. Would you continue, please?

A As I recall, I had just said that I believed that Mr. Peterman, who was the active person, actively running the business, could have been repladed at that time by someone in the publishing business at a salary of $15,000.

I based that on my knowledge of the salaries paid in the industry, from knowing as many companies as I did, and I also based it on having conducted or had conducted for me salary surveys, what we call manpower studies on behalf of the Associated Business Press, which was the association of business publishers.

These manpower studies asked the various members of that association to list the salaries of the different employees by their job function. In other words, they would get the salary of the publisher, the salary of the editor, the advertising director and so forth.

In reviewing these, in reviewing my idea of what the salary should be, I went back to find out what those particular surveys showed to make sure that I was correct in my assumption of the $15,000, and found what I believed to be good support for that figure.

MR. DINKES: I object to that. I object to somebody else supporting his opinion.

THE COURT: Overruled.

THE WITNESS: This is not somebody else; this is a statistical listing of the --

THE COURT: You don't have to argue with Mr. Dinkes. I have overruled the objection.

THE WITNESS: Thank you.

Q Would you go ahead, please?

A If I still have your pieces of paper, go from the salary figure of 15,000 --

MR. NESSEN: Your Honor, could we have marked or could we allude to what the witness has said were the surveys.

THE COURT: Isn't that what we referred to during the hearing?

MR. NESSEN: I don't think the record will be clear, your Honor.

THE COURT: Exactly, wouldn't -- you have those documents before you?

THE WITNESS: Yes.

THE COURT: 106 and 105, is it not?

THE WITNESS: Correct.

THE COURT: All right.

A Back to our piece of paper. If you deduct what I consider the normal officers' salaries at that time of $15000 from the profit before officers' salaries, we arrive at profits in 1964 of 42,000-and-something; 1963, 28,000, 1962, 42,000-plus.

From these, in the normal course of doing business, income taxes would have had to be paid. So I deducted the provision for New York State income taxes at 5-1/2 per cent at that time, and from that figure deducted the provision for federal income taxes, which at that time was 22 per cent on the 25,000 of profits and 50 per cent on the remainder.

I then ended up with profits after normal salaries and after income taxes, as you can see, for the fiscal year March 31, 1964, $26,887; '63, 20,688; and '62, 26,894.

Now, if you will turn the page you will see that I have averaged the figures for those three years, getting an average of $24,823.

You might ask -- I might point out that in addition to looking at those years, I looked at two years prior to that.

THE COURT: We are not going to go over that. I specifically excluded that.

THE WITNESS: Right.

THE COURT: Excpet I think you explained that you looked back enough to determine that these weren't abnormal years.

THE WITNESS: Correct. That's all I wanted to say.

THE COURT: Fine.

A To the average earnings of 24,823 I applied the price-earnings ratio of 10 times and arrived at a value on a going-concern basis of $248,230 for Taxi Weekly, Inc.

Q Mr. Kobak, would you tell us now how you arrived at that multiple of 10 times earnings?

A There is no exact science in valuing a company. I started, as I said before, by looking at the values that publicly traded securities were being sold at, and you will recall that was 16 times earnings, or a little more than that at that time.

THE COURT: The magazine?

THE WITNESS: In the magazine group, correct.

A I said Taxi Weekly should not be valued at as high a multiple as publicly traded securities for several reasons.

First, it was not growing; it was a static business, the taxi industry hasn't grown much since then either.

Second, it's a smaller business and wouldn't be as attractive to as many people in the event of a purchase.

And third, Mr. Nessen, if I may have my little cards back --

MR. NESSEN: Sure.

Why don't we have it without the cards? You can't remember it?

MR. WENTZEL: Do we need these comments, your Honor?

THE COURT: We don't.

A And third, because it was a private company, and the private companies at that time weren't selling at the same high multiples that public companies were selling.

At the moment it might be difficult but then it was not the same.

For that reason I came to the conclusion that at 10 times average earnings for the period of three years would represent the going value of the company rather than the 16 or more times that public companies were selling for.

I also looked at the balance sheet of the company to see whether there might be excess assets there.

THE COURT: Okay, go ahead.

A I found on the balance sheet actually assets sufficient to carry the business on but not excess assets that weren't needed in the business. Therefore I didn't add any value for that purpose. And I concluded that the value of the company, as I said, was 248,000-plus.

Q Did you attempt to determine whether the newspaper and the magazine, monthly magazine, published by Taxi Weekly should be separately valued?

A I didn't feel that she should be separately valued because I didn't feel that either one of them could be carried on alone. In other words, there is a point you reach where a business gets too small and it can't profitably be operated. Therefore I felt that they had to be valued together. They were related in the nature of the subject matter and the people who would be connected with them and who were operating them.

THE COURT: So what you were evaluating was the corporation operating the two publications, Taxi Weekly and Taxi Monthly Auto Rental News?

THE WITNESS: Correct.

THE COURT: Okay.

Q Now, Mr. Kobak --

MR. NESSEN: Your Honor, just a second. At the bench for a minute.

(Discussion at the bench off the record.)

THE COURT: Are you finished going over these figures?

THE WITNESS: Yes.

THE COURT: Okay. Mr. Wentzel, why don't you collect those tabulations.

BY MR. WENTZEL:

Q Now, Mr. Kobak, in reviewing the profits of Taxi Weekly, Inc., have you also attempted to determine what the profits of Taxi Weekly would have been had it continued on as it had in the years you examined uA until today?

MR. NESSEN: I object to that, your Honor, as clearly beyond the scope of what was promised.

THE COURT: Well --

MR. WENTZEL: I would certainly like to be heard on that, your Honor.

THE COURT: I wonder,if this is going to be a matter of any complexity, maybe we ought to just adjourn for lunch now. Do we need a little time on that.

MR. NESSEN: I think it is very quick, your Honor.

THE COURT: Why don't you come on up then.

(At the bench.)

AFTERNOON SESSION

THE COURT: Can I ask you this:

BY THE COURT:

Q Mr. Kobak, can you give me an objective and frank evaluation of the lost profits figure calculated over -- what would it be? You start with --

A Yes.

Q Now, I don't know how valid it is or much about it. Is that a good theory or isn't it?

A You have to remember my business is valuing going properties for the purchase or sale or something of that kind.

MR.NESSEN: I can't hear, your Honor.

A The lost profits theory would only be applicable in a thing of this kind.

Q What you are doing is you are trying to make assumptions. You have got a business that went out of business in '66 and during the last couple of years it was suffering an unusual situation?

A Correct.

Q And so you are really starting with '64, right?

A Correct.

Q Now, you have studied this company in order to evaluate the going concern value, right?

A Right.

Q Okay.

Now, just tell me how solid in your view it is to assume the continuation of this business with no changes except cost indexes?

A It seems to me that the number of taxis in the City of New York has remained relatively constant until this time. The number of problems it had have continued to be many and many of them are the same ones that they had at that time.

There is need for communication in a field of this kind as there is in any field, and there is also a need for advertisers to try to sell their wares.

In the ordinary course of events I don't see any reason why the magazine, the newspaper or whatever you want to call them shouldn't continue virtually in the same way they had been with only cost and income increases based on inflation.

Now, I can't prove that obviously except that I have seen business papers go along in fields year after year until the field disappears, which this one hasn't.

Q What about personnel?

MR. NESSEN: Mr. McGrath is the expert.

MR. MC GRATH: May I ask a question?

THE COURT: Yes.

BY MR. MC GRATH:

Q Would your opinion change if we were able to establish that the number of individuals employed in the industry dramatically changed?

A I don't see why, really.

BY THE COURT:

Q Are you aware of any of these facts? I don't know whether there are facts or not, but are you aware of any of this?

A My information is that there were approximately 7,000 fleet subscriptions, 4,000 copies distributed to individual owners, some paid and some free.

MR. NESSE: That is total contributed by our stipulation.

THE COURT: Just a moment. Let's not have a lot of cross talk.

Q Now, you are assuming 7,000 subscriptions, 7,000 copies going to fleet owners, right?

A Right.

Q And 4,000 going to owner-drivers?

A Right.

Q Some paid, some free?

A Right.

Q Now, if you take 7,000 subscriptions going to the fleets, and if there were indeed 11,000 fleet drivers at that time, now let us suppose that the number of fleet drivers decrease to 6,000, would anyone be able to say what that would do to the fleet subscriptions?

A I have no idea. However, what he said was that the number of full-time fleet drivers was 6,000.

Q I'm not quibbling. We are talking about gross figures and it seems to me no matter how you slice it, 6,000 is probably going to end up different than 11. In fact as the nuances and details of all that are things outside of your cognizance, right?

A I have no idea how many part time drivers they have.

Q Right. We don't have it yet. And basically you haven't considered in anything you are ready to present to us really any change in the industry at all, have you?

A I'm sure the industry wouldn't be served in precisely the same way but the industry is about the same size and doing about the same thing.

Q All right. And if that assumption is invalid, that would be something that would affect your lost profits?

A Probably.

Q Probably?

A Yes.

Q Now --

BY MR. WENTZEL:

Q Mr. Kobak, I show you 103 for identification and without stating what the contents of it are, would you describe what the document is?

A This is a document prepared in 1964 by J. K. Lazar & Company giving the earings of publicly traded securities, their price on the marketplace at June 30, 1964, and the price earnings ratio stated in various different ways.

THE COURT: These are all public companies and none of them are in newspaper companies, right?

THE WITNESS: Some of them may be publishing newspapers along with other things.

THE COURT: But none of them is exclusively a newspaper company?

THE WITNESS: That's right.

THE COURT: They are mainly magazine companies, is that right?

THE WITNESS: That's right.

THE COURT: And this was the basis for your giving the '6 multiple figure, is that right?

THE WITNESS: That's right.

THE COURT: It was an average of these specific companies?

THE WITNESS: Right.

THE COURT: Now, what about 105, what is that?

Q Would you identify Exhibit 105, please?

A 105 is a page from the Manpower Report developed for the associated business publications by J. K. Lazar & Company covering compensation of publishers for the year 1967 the specific amounts that were paid publishers in different volumes of business ranges.

THE COURT: Well, I can't read it very well. What is the top graph? The dots on the top graph are dots placed for a particular publisher at a particular salary?

THE WITNESS: It is showing the salary of each publisher on one scale, and on the other scale the volume of business that the publication was doing. It is a scatter draft from which the grey lines were drawn to show the trend.

THE COURT: Now what is 106?

THE WITNESS: 106 is the same type of information for a survey done in 1965 and another done in 1962. These are in terms of absolute dollars rather than in a graph form.

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CROSS EXAMINATION

BY MR. NESSEN:

Q Now, Mr. Kobak, you were talking about a going business theory; isn't that what you have been giving us the evaluation, that technical term?

A Correct.

Q And you went and you looked at what public companies were selling at and took an average and began at 16?

A Right.

Q Now, of course, some of these price earnings ratios were below 16 and other were above, and most of these companies, as you said, were diversified companies?

A Correct.

Q And by diversified, what do you mean?

A Some of them, in addition to doing magazine publishing, had book publishing arms, printing plants were connected with them, and things of that kind.

Q And other offshoots?

A Right.

Q That brought in income?

A Correct.

Q And these companies that you are talking about, what was the volume of Taxi Weekly in 1964, do you remember?

A 140, 150,000.

Q And these companies are in the many millions, aren't they, the volume?

A Most of them were.

(Discussion at the bench off the record.)

(Record read.)

Q Were there none under a million in this list?

A I don't believe so.

Q They were all listed, are they, on the Stock Exchange?

A No. Many of them were over-the-counter.

Q But some of them are actually listed on the Stock Exchange?

A Yes.

Q Now, then, what you did was, taking what these big companies were doing, these diversified companies, and then you discounted, and you took in three factors, am I right?

A That is correct.

Q That is, smallness, private and growth?

A Right.

Q And that is all?

A What do you mean that is all?

Q That is all you considered? Those are the three factors?

A Those were the three major factors I considered.

Q Well, you haven't left out any major factor, have you?

A In what respect do you mean that?

Q Well, you said they were the three major factors?

A Yes.

Q I want to make sure. And those were the three factors that you gave us on direct examination, is that correct?

A That's right.

Q And you haven't left out any?

A Not in determining to reduce the public price down to 10, correct.

Q So let us take growth, sir. How much did you reduce from the six because Taxi Weekly was static, as you put it?

A I didn't assign any particular reduction to any particular item.

Q Well, isn't growth really growth in both circulation and advertising -- wasn't that vital to the success of a small publishing company in the 1960's?

A No.

Q No?

A No.

Q Do you recall the journal that was published in 1963 that J, K. Lazar & Company, that company that you said that you were the boss of, published in 1963?

A I recall there was one.

Q Do you remember that --

THE COURT: Are you going to refer to is? Do you want it marked?

MR. NESSEN: Temporarily no,your Honor. I think I can move faster and I think it will be more important.

Q Do you remember writing an article with Morris Goldman on a report on business paper operations during 1962?

A Not offhand.

Q Do you remember writing about the industry on July 1963, "While improvements were made, the picture was not all bright. The increase in profits was caused almost completely by an advance in the average income per advertising page."

Now, in the 1960's Taxi Weekly was pretty much static, wasn't it?

A Taxi Weekly was static in terms of dollars of advertising, dollars of circulation.

Q And isn't it -- do you know that the rate, the advertising rate between 1960 and 1966 didn't change one cent?

A I'm aware of that.

Q In Taxi Weekly?

A Yes.

Q And wasn't it vital in the 1960s that that rate be changed and that circulation be increased and advertising pages be increased, otherwise it was not a going business?

A It was important for business publications at that time to continue to increase their advertising rates. Most of them in actual fact were suffering declines in advertising pages and circulation. The situation persisted.

THE COURT: I don't understand this. Is it correct that Taxi Weekly's advertising rate didn't increase from 1960 through to the end of '66? Is that right?

THE WITNESS: That is correct.

THE COURT: Now, you will just have to go again because it went too fast for me. What are the factors that you are talking about that you thought were necessary?

THE WITNESS: The business publishing industry, like all of us, I guess, has been suffering from inflationary costs for the last 15 or 20 years.

THE COURT: Taxi Weekly is part of that industry?

THE WITNESS: Yes. And the way that they have continued to be profitable is by raising their rates to the advertiser, and the fact that Taxi Weekly hadn't increased its rates in four or five years really meant there was an opportunity rather than a difficulty.

Q You thought it was an opportunity?

A Yes.

Q Didn't you, a minute ago, tell us that it wasn't vital that Taxi Weekly raise its circulation or raise its advertising rates?

A No, I didn't say that. I said it was not vital to increase its advertising pages or its numbers of circulation.

Q And didn't you tell us that it wasn't vital for a small press, small newspaper like this, it really wasn't vital for them in the 1960's to raise their circulation or advertising? Didn't you say that a minute ago to us?

A I said -- shall I repeat it again?

Q No, that is all right. You can answer yes or no. If you didn't --

A I said it is not vital to increase their advertising pages or the amount of their circulation.

THE COURT: You are talking about volume now.

THE WITNESS: Volume.

A It was necessary to continue to increase prices.

Q But they didn't increase prices, did they?

A No.

Q And now, remember writing, you and Mr. Goldman, "The upsetting factor which seems to beset the industry, despite the current upturn in business, is the hardening of some of the trends which publishers face. Advertising pages for existing books have declined for a number of years. Publishers are fighting a battle with inflationary forces which can scarcely be equalled through the economy. The growth of the economy makes higher circulation mandatory if a publisher is to serve his field, higher circulation and the constant rise in costs have made advertising rate increases imperative in order to be able to continue a top flight publishing job." Isn't that what you wrote in the 1960's?

A I would have to read it and see.

Q I wouldn't want you to feel that I am misreading you one bit.

(Handing.)

(Pause.)

Q You can read some of the other underlining there, too, if you want.

Do you have any question that you wrote that?

A It looks real.

Q My question is, not what whether it looks real, do you have any doubt that you and Mr. Goldman wrote that to the accountants in the Lazar ledger?

A No, I have no doubt about that.

THE COURT: Well, I am sorry to say, I didn't understand at all the impact of what you read. Can you ask some questions and go a little slower so that we can understand the point?

MR. NESSEN: Right.

Q You discounted for growth, lack of growth from what these multi-million dollar companies, their earning ratios?

THE COURT: He has testified to that.

Q And what I want to know is whether you thought, in fact, in the 1960's, that growth in circulation and growth in advertising was actually vital for a business to succeed in the 1960's?

A I think I just said that.

Q Now, you can't put a value on it. Did you put two or three points on growth?

A I said it was not vital.

Q Was not vital?

THE COURT: The problem I am having, and maybe the jury is, I don't understand the impact of what you read to him. I heard language about increased volume but it went too fast and I didn't get the point. If that is a different position than the one he is taking now I would like to understand it and I am sure the jury would too.

(Colloquy)

Q Now, Mr. Kobak, you were quoted in an article as late as 1970, do you remember that article? It was about you?

A Good. Which one?

(Colloquy)

Q And the higher rate would be a way to combat inflation?

A Exactly.

Q If you have got a situation where you don't have an expanded market, then you neither have the opportunity nor the need to put out further papers, right?

A That is correct.

THE COURT: Okay.

BY MR. NESSEN:

Q Well, let's assume you don't have an expanding market, sir, and costs were still going up, you had to raise your rates, didn't you?

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Q And you wrote manpower costs to a great extent the control of manpower costs is an individual problem, one which could be solved primarily through intelligent management of each company.

But we must recognize that pay of the white collar worker is rising constantly and threatens to continue to do so.

Do you remember writing that, sir?

A I don't recall offhand but it sounds reasonable.

Q Did you ever give an interview to Immediate Decisions in November of 1970?

A That is the date, yes, but I don't recall the date.

Q Had the small business publishing changed much between 1965 and 1970?

A There is certainly no question that with increased inflation small business has a more difficult time making profits than it did before. This is a large difference.

Q But there was no great change in the industry at that time, was there?

A Not that I recall.

Q Did you write or did you give the quote "Small magazines in particular are finding it difficult to survive all by themselves. They can't keep up with the costs. They can't pay the salaries. They may need a $5,000 a year ad director but they can't afford him so they merge in order to get the capitalization they must have. They merge, they buy, they sell, they diversify. In publsihing you can't stand still."

Did you write that, sir? Did you say that to the reporter?

A It sounds like something I might say, yes.

Q Did you say to him "The Business Press is having problems. Half of them are in trouble." Is that something you would have said?

A I don't recall saying half of them were in trouble, but go on.

Q Well, you have no doubt that I read correctly from the article?

A I have no argument with your reading.

Q And did you write,"Of course, many of them, small business, don't deserve to stay in business. We really don't need all those magazines."

Do you remember saying that?

A Yes.

Would you like to understand the context of that?

Q Well, you can say whatever you would like.

A In a great many of the business paper fields you run into a situation where there might be five, six or seven competing magazines in a relatively small field, and the field really didn't need more than two or three, and that's what I was referring to.

Q Now, wasn't one of the prime costs -- you remember you assigned $15,000 to a replacement for Mr. Peterman. Now wasn't it a fact that you wrote, throughout the 1960's, throughout the 1960's, that publishing costs and salaries were indeed if not the single, among the three most significant inflationary costs, from 1960 right through 1966?

A I am not worried about '65 and '66. I'm only interested in the time up to July 1964.

Q All right.

A All right?

Q Let's take that.

Would you let me askyou some questions? Do you remember writing -- I had a question to you, and I don't think you answered it.

A Would you repeat it?

THE COURT: What did he write and where?

MR. NESSEN: All right, let me get to it.

Q Did you write in 1962, in a magazine called

Mediascope, February 1962, "Salaries in the publishing field have risen even more rapidly than those in the related fields of printing and paper. Publishers experienced a 66 per cent increase in 1960 over 1950 and this went up to 72 per cent in 1961, probably taking more of the publisher's expense dollar than any other cost factor."

Do you remember writing that, sir?

A I don't remember writing it. However, if you want the precise figures, I have an index of salaries beginning in 1950, I think.

Q We will try that but I just want you to see whether this is a fair summary that you wrote. Wasn't this a fair summary of the figures that you then had, sir?

A This says they went up 66 per cent from 1950 to 1960. I don't get the complication.

Q And then read the next sentence.

A And they went up to 72 per cent, which is a slight increase to '61.

Q And you say that that didn't continue through 1964, that inflationary spiral? Is that your testimony? Is that what you want to tell the jury?

A I think they continued to go up but very slowly in the next two or three years.

Q Well, do you remember writing an article in January of 1962 where you said that salaries , paper and printing take up 80 or 90 per cent of publishers' expenses? Is that accurate?

A That's about correct, yes.

Q Do you remember, in March 26, 1965, writing an article for Printers Ink called"The Business Press, Years of Hardship and Promises." Do you remember that?

THE COURT: What year?

MR. NESSEN: March 26, 1965.

A Well, once again, I don't remember the specific article.

Q All right. Let me read from it.

"The major slice of total publishing expendtirues is in money spent on paper, printing, postage for mailing the magazine, and all types of salaries. Salaries. Publishing salaries have risen an average of 84 per cent since 1950. In the last year alone they rose 4.5 per cent from the 1963 level. Normal salaries, payroll, taxes and fringe benefits are upward of 40 per cent of business publishing costs."

Did you mean to tell the jury a minute ago that there was a slacking of the pace of inflation in 1964 and 1965?

A Once again I am not interested in 1965.

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Q Well, I am interested in 1964 and 1965.

Is this a fair summary? Were you fairly summarizing?

A It sounds reasonable, yes.

THE COURT: What was the figure since 1963?

MR.NESSEN: 4.5 per cent in that year alone.

Q And did you write "There are many expanding items on his profit and loss statement, revenue which is mostly derived from advertising space is up, it is true." Well, that wasn't true of Taxi Weekly, was it?

A What time are we talking about?

Q I am quoting March 26, 1965.

A Right.

Q Where you were writing about what happened in 1964, do you remember that?

A Right.

Q And you said, and I quote, referring to most of these business presses, "There are many expanding items on his profit and loss statement, revenue which is mostly derived from advertising space is up. It is true. But the portion that he really expanded at an astonishing rate is costs in every department of his operation. The only major items that has not expanded is a profit margin."

Do you remember writing that?

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A It sounds reasonable.

Q And just taking it through to January 1966, writing about 1965, an earlier period, do you remember saying in an article, published article in Mediascope --

THE COURT: What is the date?

MR. NESSEN: January 1966, your Honor.

(Colloquy.)

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A Once again, I don't remember but I won't deny it. It sounds reasonable.

Q Well, is it not your testimony that the inflation -- is it still your testimony that the inflationary spiral from 1960 changed a little bit in 1964 and went down?

A I didn't say that.

Q Okay, Mr. Kobak. You are using the going concern formula?

A Correct.

Q For this business?

A Correct.

Q And the going concern for a newspaper is -- well, let me put it this way. Essentially what does a newspaper sell? What does it sell? It sells to the reader information or news. It sells to the advertiser, the readership of the reader.

Q Intangibles, isn't that correct?

A Absolutely.

Q And the business depends almost entirely on the personal talent or ability and ingenuity of those publishers, doesn't it?

A Plus its position in the marketplace.

Q It is not the printing press, it is -- by position you mean its ability to get to readers and to command circulation, isn't that correct?

A That is correct.

Q And so in order to do that, you have written, and there is no question, the magazine must have what you call a formula, isn't that correct?

A That is correct.

Q That is, it must have a policy, a general policy?

A I didn't say that.

Q Well, it must have a format, a content that, in general, readers expect, isn't that correct?

A I wouldn't say that readers expect. I don't think that is the word I would use. One that would attract them, yes.

Q And for their to be a formula, in general, a magazine must continue the same type of editorial content and even though the stories may vary, they must generally follow a pattern in order to control the readership. Isn't that correct?

A No, I didn't say that. I said there has to be an editorial rationale, a reason for being and it has to serve that. If you want the most drastic changes you can look at Cosmopolitan of today and of twenty years ago, or Red Book.

THE COURT: Editorial rational.

THE WITNESS: It has to have an editorial rational, an reason for existence. It doesn't mean it follows a pattern the way the New Yorker does year after year.

Q Or the way Playbody does, for example.

A I am not familiar with that.

Q Do you recall offering an article called "Accounting for Magazine Publishers"? Do you remember that?

A Give me the date again.

Q I don't have the date but it says "James B. Kobak, Accounting for Magazine Publishers, Certified Public Accountant of J.K. Lasker & Company,"that must be you, isn't it?

A That right be a chapter in a book, counsel!

Q Yes, it may be a chapter. I just have this photostat. But you wrote, and isn't it true, by its very nature magazine publishing is intangible. You can teach and feel a magazine but what is actually being sold to readers is not the ink on the printed page but rather the editorial content. The sale of advertising is also intangible. Readership is being told entirely new material is conceived and designed and produced with each issue. Each issue, however, is not a new product. It is the exemplification of the publishing formula of the magazine and follows that formula very carefully. Material is new in every issue but the basic produc is still the same. Capital assets are of little importance in publishing.

Aside from office furniture and machines the magazine publisher doesn't require any capital assets. The real capital asset of any publication is readership, continuing annual expenditures are needed to maintain readership, and the magazines competitive position.

Now, Mr. Kobak, we agree that the reason you attracted readership is that the makeup of your magazine appeals to somebody, is that correct?

A Correct.

Q And that's whatyou mean when yousay that the formula really gathers in and attracts readership, isn't that correct?

A Yes.

Q And every magazine has the formula, and they carefully follow that?

A No, I wouldn't go that far.

Q Well, didn't you say, or isn't it a fact that if tomorrow, say, let us say National Review, you know the National Review?

A Yes.

Q If tomorrow it changed its formula from supporting people who were perhaps right of center and started supporting people who were left of center, that would be the dangerous and risky thing for it to do?

A I think you are using a bad example if I may say so.

Q But just answer my question.

THE COURT: You answer it.

A That's the magazine which loses money and has forever and really is a propaganda organ for Mr. Buckley who supports it.

THE COURT: Let us not get into that. It has got a circulation, right?

THE WITNESS: Yes.

THE COURT: All he is askingyou is if it changed its viewpoint, what would happen?

THE WITNESS: It would probably get different readers.

Q It is like the creation of a new magazine, isn't it?

A Sure.

MR. NESSEN: Thank you.

THE COURT: Let us take our afternoon recess.

(Recess.)

MR. NESSEN: May I continue, your Honor.

THE COURT: Certainly.

Q Mr. Kobak, when evaluating a publication of this kind, you look at, don't you, the nature of the circulation and the likelihood of its continuing and so forth, don't you do that?

A Of course.

Q And one of the important factors, isn't it, is whether the subscriptions are under contract or not, or whether they are cancelled?

A Not necessarily, no.

Q Well, haven't you testified that that is an important factor in considering how to evaluate an --

A I don't recall testifying to that effect.

Q You don't consider the fact that tomorrow, say a person could cancel his subscription?

A That's true of all magazines at any time, subscriptions are cancellable at will and advertising is cancellable too, contract or no.

Q It doesn't get into your evaluation?

A Not only I can see a reason for them to cancel.

Q Oh, yes. Did you know that in the spring of 1964 Mr. Peterman , even before then, as some of the testimony is, Mr. Peterman and Mr. Wysinger were having a dispute? Were you told about that?

A No.

Q You weren't?

A No.

Q And isn't it a fact, sir, that one of the important considerations -- and I am reading from an articles of yours in Folio, in 1972, can I read it?

A Please do.

Q "A last word of warning. While magazine publishing in general is a high profit-low risk business, it can be quite the opposite. Bad management, a lack of planning, an editorial product that doesn't meet a need or deliver a promise, a falling out among partners, lack of adequate financing, and many other mistakes can render the best idea worthless."

Do you remember writing that?

A Vaguely.

Q Do you remember that "The costs for launching a magazineis an art of the magnitude of those required for most major businesses."?

A That is correct.

Q Do you remember writing that entry into the magazine field is easy at times?

A At times.

Q And there are two revenue sources, aren't there, in a newspaper such as Taxi Weekly: There is revenue that comes in from advertising and revenue that comes in from circulation?

A Correct.

Q And the more circulation you have, the better it is to get more advertising?

A Correct.

Q And the fact of the matter is that the circulation is really a key to the selling of advertising, isn't it?

A Of course.

Q And the fact of the matter is that circulation revenue of Taxi Weekly, if anything, went down a little bit in the years 1960 through 1962, isn't that correct?

A That is correct.

Q Now, I am interested in just one thing because you may be the expert to tell us about it.

The revenue, the amount that you can charge varies with each publication and depends principally on the following factors, or at least some of the following factors: One, the number of readers, advertising rates are higher whether more readers are reached. Quality of readership. And going down the list, the number and type of colors used in an ad. Isn't that so?

A For some magazines, some products.

Q Well, if you used one or two colors rather than one color, you charge more, don't you?

A Oh, yes.

Q Now, you gave us a list, I think, of the various companies that you were involved with or had something to do with negotiating their sales; do you recall that? Exhibit 100.

A Yes.

Q And what I wanted to find out, really, is on some of these deals, indeed, on many of these deals, rarely is all cash given, isn't that a fact?

A I would have to look at the list carefully to see that because all cash is unusual, really.

Q It is unusual. That's the only point I wanted to make.

A If you don't give all cash you have to pay more.

Q Excuse me? If you give --

A If you want an installment sale you have to pay more.

Q And if you put it the other way around, if you want all cash, you get less, don't you?

A That is correct. You get less? No.

THE COURT: You pay less.

THE WITNESS: You pay less, or you get less.

Q I mean if you are the seller, you get less?

A That is correct.

Q And many of these deals are on a payout basis?

A Yes.

Q Isn't that correct?

A Yes.

Q Now, as I understand, you know about publishing, there really are five departments in a newspaper or a magazine, aren't there?

A Yes.

Q There is production, advertising,editorial, circulation and administration, isn't that correct?

A That is correct.

Q And you gave us or looked at a document that you said gives you an indication that Mr. Peterman could be replaced for $15,000, and you looked at page 29 of 1965, this manpower report, and isn't -- there is a fact that says, for magazines or newspapers, "Total billings up to 500,000" I guess that includes 500 or less, 500,000 or less?

A Yes.

Q And that would be Taxi Weekly, wouldn't it?

A That would be at the very low end of the scale.

Q In terms of 500,000 or less, is that correct?

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A Right.

Q And then it says "Middle 50 per cent, 18,700 to 25,00
median 20,000" isn't that what it says here?

A Yes.

Q Is that so?

A Yes.

THE COURT: Let me get it. That particular reference had a category of publications up to 500,000, right?

THE WITNESS: That is correct.

THE COURT: And the range of salaries for the publishers of such publications was what?

MR. NESSEN: 18,700 to 25,000 was a median of 20,000.

THE WITNESS: The middle range of the middle 50 per cent of publishers. Which means there are 25 per cent below and 25 per cent above.

THE COURT: Okay. That's a kind of a complicated thing. You have got the publishers that are in that range as far as their volume, right?

THE WITNESS: Correct.

THE COURT: Now, out of all the salaries for the publishers there was the middle 50 per cent selected?

THE WITNESS: Right.

THE COURT: And that middle 50 percent ran from

18,700 to 25,000?

THE WITNESS: Correct.

THE COURT: So some of them in absolutely the lower 25 per cent would be less than 18,700?

THE WITNESS: That is correct.

THE COURT: And some of them higher?

THE WITNESS: But the scale runs pretty much with the volume of the computation.

THE COURT: Okay.

THE WITNESS: And we had the lowest volume of the once listed there. They would be at the low end of the volume in that group.

Q You said it is the lowest volume of what?

A I said we weren't listed there. Therefore we were at the low end of the volume for that group.

Q What do you mean you weren't listed there?

A They weren't a member of the association, that's all.

Q This thing has no relevance to them then? Is that what you are saying?

A No, I didn't say that.

Q Well, what are you saying?

A I'm saying that they would probably be below the 18,000, whatever it was, figure of the middle 50 per cent.

Q You don't know that, do you?

A I have my opinion.

Q You do?

A I do.

Q And I thought you said that when you looked at this, that you were relying on these figures.

A I said it is my opinion that 15,000 is what Mr. Peterman could be replaced with in the market at that time. I then looked at these particular surveys to see whether they agreed with my approach and found that they did.

Q And that's salary for publishers, is that correct?

A That is correct.

Q And publishers plan, organize, direct and control all resources utilized in the profitable production of a busines or trade magazine with the chief editor, establishes editorial policy, provides overall direction for sales promotion, research, circulation, production and personnel, responsible for the budget and cost. That's the function?

A On a magazine of this size he does everything.

Q And that's a fact, isn't it? He does more than that? A publisher on this sheet doesn't go out and sell advertising, does he?

A Sure.

Q He does?

A Sure.

Q And don't you have a separate category for salesmen?

A Sure.

Q You do, don't you?

A On a larger magazine.

Q Are you saying that this has no relation, that these categories, when a man does more than one function, that he should be compensated only for a single function?

A It says that you wouldn't find an editor or an advertising director on this size magazine.

Q It says that?

A That's what actually happened.

Q The fact of the matter is -- I mean does it say it? I'm sorry. Does it say it or does it say it up to 500,000? Where does it say that you won't find a, what did you say, editor and what else did you say?

A Advertising director.

Q You wouldn't -- would you find salesmen?

A Not on a magazine doing 150,000.

Q That's not very big, is it?

A No.

Q and, in fact, let's go down and see what we are talking about: It is so small and so unique that it has its own rules, doesn't it?

A No.

Q Well, didn't you say --

A Its own rules vis-a-vis what?

Q Rules on salary, and on the value of people.

A Not different from other magazines of its size.

Q Well, let us explore the question, if you will, of a big publishing house, or those that you have said were up to 16 or somewhere below and some were high but they averaged up to 16, but are diversified, they don't depend so much on the good will of a single man, do they, as a small publishing house?

A It depends on the industry.

Q And you compensate the man for his ability for the good will, don't you? He gets a higher end of the scale?

A Not necessarily.

Q But there are times he does, isn't that a fact?

A The history has been that this is not that important, frankly.

Q The history has been that if a man -- let us assume that a man has been, for example, thirty years in business, has contacts and has friends with everybody in the industry, and that portion of the industry that he is really friendly with, goes to their meetings, and knows everybody, and they give him more than two-thirds of their circulation, do you say that that might be a unique situation?

A No, I didn't say that.

Q Well, didn't you say --

A That's a very common situation in the business paper field.

Q And you pay a man t-p?

A I didn't say that either. You said that.

Q Do you?

A No.

Q You mean to tell me that tomorrow you could put in a man, for example, in this situation, who had no contacts, pay him $15,000 and that would really replace him? Would you do that?

A No, you wouldn't do that but there have been enough magazines bought and sold so you know you have a transition period where the publisher would take the new man around and introduce him and et cetera, et cetera. But a magazine is begger than one person. It comes to have a meaning and a soul of its own.

Q Even a small magazine?

A Yes.

Q It depends on the good will of one segment of an industry?

A One segment of an industry? I don't know what you mean by that.

Q Well, do you know that over two-thirds of the circulation of this magazine went to building subscriptions to fleet owners? Do you know that?

A This is not unusual.

Q I didn't say whether it was unusual. Do you know it?

A Sure I know that.

Q And was that a fact that you considered?

A Absolutely.

THE COURT: Look, Mr. Kobak, I am looking back at this Exhibit 104 for identification.

BY THE COURT:

Q I think you are aware that a much higher figure than $15,000 is recorded in the financial statements as salaries, right?

A Yes.

Q What was it?

MR. NESSEN: I'msorry, your Honor. I was getting a document and I didn't hear the question.

MR. WENTZEL: He had Mr. Zeff and the bookkeeper, principiapply, your Honor.

THE COURT: What was the salary figure?

MR. NESSEN: For Mr. Péterman? I am getting the tax return, your Honor.

THE COURT: Where is the financial statement?

MR. NESSEN: I am getting it right now, your Honor.

(Pause.)

MR. McGRATH: $41,640.

THE COURT: I thought we had the financial statements in evidence.

MR. NESSEN: Yes, we do, your Honor.

THE COURT: May I see them, please?

MR. NESSEN: Yes, your Honor.

(Handing.)

THE COURT: Well, officers' salaries are $50,920. Let's say 51,000, right, in 1964. That's what it says.

Q You say the normal officer's salary would be 15,000, a reduction of some 35,000.

Now, as I am sitting here, I don't fully understand what this meant by normal. How does one know -- normal for what?

A I'm saying that my knowledge of the publishing industry at that time, Mr. Peterman could be replaced with a man at$15,000. What they were drawing in salary.

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Q. Well, that's something different from normal, isn't it? Mr. Peterman -- just as a matter of definition, that doesn't mean to me normal, and I want to ask you what you meant by normal.

A That's what I mean.

Q Normal for what?

A In a publication, in a business of this size and this type, I would expect to find a publisher receiving $15,000. In this case Mr. Peterman was also an owner, so part of what he was getting was repayment as an owner rather than as a worker.

Now, it is all called salary in the financial statements because that subchapter S that we talked about before.

Q In a given particular situation where the books of the corporation don't differentiate or don't record any lesser salaries, sitting here I really wonder what is the basis for using a different figure.

A I am sitting here as a buyer, let's say, and I say I am going to buy this business. I see Mr. Peterman and his friend getting $50,000, whatever the number was, 40 or 50 thousand dollars, and I say to myself, "I can replace him for $15,000," so that when I go to value how much I will pay for the business I substitute the 15 for the 40 or 50 because I am not going to pay anybody that much.

Q Well, in other words, you are assuming that some of this is profit or return?

A Definitely.

Q So it is really, you are trying to arrive at how much is return on capital and how much is payment for services?

A Right.

Q How, can you approach it from another side and find out what is a normal return on capital, or is that meaningless?

A In the publishing business, of course, capital is not employed to a great extent so this is not a term that is used. It is meaningless because the return on capital is enormous if you stop to think about it because there is really no capital in the business.

I wonder if -- may I? I wonder if the $15,000 sitting here in 1975 --

MR. NESSEN: I object to any of this your Honor. I just don't think it is proper.

We know that we are dealing with '64.

Q Return of capital is a meaningless word, isn't it, in the publishing field?

A It's very seldom used because capital is so unimportant practically speaking.

Q Did you tell his Honor just a minute ago that subchapter S required or made it mandatory for them to put this in as compensation, the money they got?

A It makes it desirable to withdraw the money each year. I don't care what title they use, whether they call it compensation or dividend not being important.

Q Subchapter S didn't require them to label it compensation, did they?

A Didn't require them to, no.

Q And you understand that these tax returns were all audited or all made up by a certified public accountant?

A I presume they were. I haven't seen them.

Q Will you accept it as a fact because everybody conceded that here?

A Yes.

Q And you are a certified public accountant?

A Correct.

Q And you tell me what the duties of a certified public accountant are in making up tax returns that go to the federal government?

A To comply with the law as closely as possible.

Q And to properly tell the federal government on a tax return under the pain of the penalty of perjury, indeed, an accurate reflection of what went on in the business, isn't that correct?

A I don't recall ever hearing that.

Q Well, is it right for a certified public accountant to put in something on a tax return that he didn't believe was accurate or justified?

A In this particular case whether you put it in one place or another is meaningless.

Q You answer my question. We will come to that in a minute.

A Say that again.

(Question read.)

A What the certified public accountant is supposed to do is to make sure the taxpayer obeys the law as closely as possible. Which line he uses is really not important.

Q When he says taxable income for the fiscal year 1963, $6,169, and he puts down compensation to Mr. Peterman, $24,360, and to Mr. Wysinger, $25,360, you

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are telling us that it doesn't matter, or he should do that, it's okay to do that even though he may not believe that that's just compensation.

A I don't think it is the CPA's duty what is just compensation when he fills out a tax return.

THE COURT: Are you saying that it would make no difference at all, from a tax standpoint, state, city, federal, whether these labels were used, officer's salaries or dividends or profits left in company?

THE WITNESS: Profits left in company?

THE COURT: You are saying there is absolulteły no difference?

THE WITNESS: The idea of a subchapter S/s that it will be taxed as a partnership was taxed so it doesn't matter whether you call it salary, dividend or what you call it.

THE COURT: I just want to be clear. I just don't know.

Are you saying it makes absolutely no difference from any standpoint in this company what they labeled it?

THE WITNESS: Not for my purposes, anyway.

THE COURT: Let's start from a tax purpose.

THE WITNESS: There could be one spot.

THE COURT: What would be the one spot?

THE WITNESS: Whether the employee paid Social Security, unemployment insurance taxes and things of that kind. If it were all dividend, he wasn't. If it were salary, he would.

THE COURT: So that would increase his --

THE WITNESS: That would increase his desirability of calling it salary because he would be covered under the various plants.

BY MR. NESSEN:

Q That is one benefit. And a second benefit is when you answered his Honor, there is a second benefit in the state, isn't there?

A In the state?

Q Yes.

A I don't recall offhand.

Q Isn't it a fact that it makes a difference how you label it for a corporation franchise tax report?

A I really don't recall at this point. It could.

Q Do you have any doubt as a certified public accountant that it makes a difference?

A I have been out of that business for five years so don't -- I am not a tax man.

Q Well, you have written articles on taxes?

A Not in the last five years.

Q Well, we are talking about 1964.

A Right.

Q Have you forgotten about your taxes?

A Probably.

Q And you forget that it made a difference for franchise taxes?

A Probably.

Q You probably forgot or it probably made a difference.

A I probably forgot.

Q Take a look at W and see if that refreshes your recollection that there is a tax benefit

A (No response.)

Q Or could be.

A You have got to show me where?

Q Isn't it a fact that if you called it -- if you increased your net income, you get --

A Greater franchise tax.

Q -- you get 5-1/2 per cent of it?

A Right.

THE COURT: What is that, city or state?

MR. NESSEN: That's state, your Honor.

Q And isn't there another benefit that you tax people know all about, that you have to worry about?

Take subchapter S. You seem to know something about that.

THE COURT: Just before we get to that.

BY THE COURT:

Q Do I understand that the state franchise tax depends upon the amount of net profit? Is that right?

A That's correct.

Q So if you --

A If you call it salary.

Q So that the higher you can make your salaries, then the less state franchise tax you will pay?

A Correct.

BY MR. NESSEN:

Q And it is not the duty of a certified public accountant to cheat the state government or the federal government on taxes, is it?

A Shouldn't be.

Q Let's take another federal view, the subchapter S. My understanding, and correct me if I am wrong, is that you can erect this once, and the result is that you don't pay double taxation, that is, you don't pay the tax for income, on the income of the corporation, and then a tax on your dividend; you treat it all as one, isn't that correct?

A That's the way I understand it.

Q And isn't it correct that you can diselect subchapter S and you can only do that once though, can't you?

A I don't recall that. I know you can and there are four or five different methods.

Q By and large, unless there is a special exception, you can only do that once?

A I don't recall.

Q I can't testify as a tax expert, but, anyway, when you diselect -- and that sometimes happens, doesn't it --

A Yes.

Q -- then it is important, isn't it, to avoid double taxation, to have a history to show in an audit, a history of high salaries that could be important then, couldn't it?

A Itcould be, yes.

THE COURT: I'm not following this. I'm sorry.

MR. NESSEN: Let me do it again. Your Honor, I think this is a fair summation, and see if I am wrong: Once you diselect, if you ever do diselect --

THE COURT: What do you mean by diselect? I think we have got to understand the terms.

Q Mr. Kobak, by "diselect" you can decide some year that I don't want to be subchapter S any more, I want to retain some income in the firm, and so you make an election and go back on the ordinary basis?

A (No response.)

MR. NESSEN: I think that's the tax term for it.

THE COURT: All right.

MR. NESSEN: And what then happens is that we will then be on a regular tax basis like any other corporation, and you are taxed on your income and you are taxed on your dividends. It then becomes important to keep your salaries up, and it is also important on an audit --

BY MR. NESSEN:

Q Am I right, when the tax people come in to perhaps challenge you, to show you had a history of --

MR. WENTAEL: Your Honor, I object to this line of questioning because there is no evidence that Taxi Weekly ever diselected anything.

MR. NESSEN: It is the possibility that accountants use.

THE COURT: I will overrule your objection. You can bring that out but I think I will permit it.

I am afraid that I was the one who invited the summary, but you are the witness.

BY THE COURT:

Q Is his summary generally true?

A Generally true as far as I can tell.

THE COURT: All right. Fine. Let's go on.

(colloquy)

BY MR.NESSEN:

Q Now, when you went down and compared Taxi Weekly to the big corporation, you know from your experience this isn't a company that could go public, don't you?

A Correct.

Q I didn't hear the answer.

A Yes.

Q And did you know that there was a problem, or, rather, a question of unionization that came up in 1964 in this industry?

A I heard about it.

Q You did?

A Yes.

Q And have you heard that the union was successful, or a union was successful, not the original union but a union was?

A I heard something about it.

Q And you realize that unions sometimes put out their own paper, don't you?

A Yes.

MR. NESSEN: Let's see if I can skip some of this, your Honor.

Q Now, you said, in regard to the Taxi Industry, that that was a company, or that was a magazine that was too small to continue, isn't that correct?

A I beg your pardon?

Q Taxi Industry, the monthly magazine, do you remember that?

A I don't remember saying a word about it.

THE COURT: That that was the second publication owned by Taxi Weekly, Inc.?

THE WITNESS: Right. But I don't recall saying a word about it except that they had to go to get it.

Q That's what I meant. And then didn't you say that it was too small to continue on its own?

A I would think so, yes.

Q You would think so?

A Yes.

Q Do you have any doubt about it?

A No real doubt, no.

Q Isn't it possible to have sold that business to someone who might have been interested?

A Someone who had a similar type of business who could carry it on easily as a byproduct sort of thing the way Les did.

Q That was possible?

A It was.

Q To try to find someone like that?

A Are you telling me or asking me.

Q I'm sorry. I am asking you.

A I would doubt it. Not from what I know about the industry.

Q It's too small?

A It's too small. As I said, it could be operated as a byproduct of another publication in the -- closely aligned in the same field.

Q Did you know that it had a competitor?

A Sure, but not a direct competitor.

Q Someone that was closely aligned, as you just said?

A (No response.)

Q Is that what you mean when you say closely aligned?

A Yes.

Q Do you know whether Mr. Peterman made any attempt to sell that business?

A I have no idea.

Q And isn't it a fact in 1966 it was just about going at the same rate and almost as good as it had been prior thereto?

A I am only up to 1964.

Q You didn't look at any figures to 1966?

A No.

Q Mr. Kobak, March 31, 1966 --

MR. WENTZEL: Your Honor, may I ask what he is showing the witness?

MR. NESSEN: I am showing the comparative profit and loss statement, March 31, 1966, which would be Exhibit R.

Q Look at the figure for Taxi Industry. It shows a net advertising income of $35,931, circulation of $926.50. Do you see that?

A Yes.

Q And after printing -- for a net income before printing of $36,000, and then a total net income, after printing costs, of $23,000. Do you see that?

A Right.

Q And that was actually an increase over the performance in 1965, isn't that correct?

A Appears to be.

Q And if you take my word, it compares with the gross profit in March, 1964 of $22,000.

A Yes.

Q In fact, they are getting a better income at the end of 1966 than they were in 1964?

A That's right.

Q And doing about the same as they were doing in 1963, if you accept my figure of $23,000?

A Except you haven't added in all the costs yet.

Q No, I haven't.

A Right.

Q And now you say certainly costs have skyrocketed in this industry in these years?

A Increased.

Q Increased?

A Increased.

Q Now, as an expert, wouldn't you say you have advised Mr. Peterman to try to go out and see whether someone would take over this business before you liquidated it?

A Not without knowing all the facts of what was going on in 1966. I wouldn't dream of it.

Q Well, you made an evaluation here, for example, without knowing that partners were bickering, for example.

A (No response.)

Q Didn't you?

A It didn't bother me to have partners bickering when one of them was inactive.

Q How did you know he was inactive?

A Based on the information I have, he was inactive.

Q Do you know how much of the revenue, the advertising revenue, Mr. Wysinger was responsible for?

A If he was inactive, it would be zero.

Q That's right. If he were inactive, quite right.

Now, if in fact he were in the office, and he were a 50 per cent partner, and they were 50 per cent, and there was bickering in the office, and the bickering had gotten out into the industry, particularly that segment of the industry where two-thirds, more than two-two thirds of the subscription income came from,wouldn't that bother you?

A Not terribly much, no.

Q Well, your view has changed from what it was in 1962, is that right?

A I beg your pardon?

Q Your view has changed about bickering not being important?

A I said bickering of people who are active is important.

Q How about people who are in the office and who are 50 per cent partners, that didn't bother you?

A Not necessarily.

Q Not necessarily?

A No.

Q When would it?

A I really couldn't say without knowing the specific circumstances.

Q All right.

MR. NESSEN: I would like to put into evidence the financial statement of September 30, 1964, the financial statement of Taxi Weekly, Inc.

MR. WENTZEL: Your Honor, this has been premarked as Plaintiffs' Exhibit 45 and I now offer it in evidence. I intended to anyway.

MR. NESSEN: Good. Better early than late.

MR. WENTZE: Plaintiffs' Exhibit 45, your Honor.

THE COURT: Okay, received.

(Plaintiffs' Exhibit 45 for identification was received in evidence.)

Q Mr. Kobak, the balance sheet on September

30, 1964 was the first balance sheet after Mr. Wysinger was bought out on September 14th by Mr. Peterman, all right?

A Yes.

Q Would you look at this and tell me whether the earned surplus -- and we will find that in a minute -- whether that remained in the business?

A Whether it remained in the business?

Q Yes, whether the earned surplus had changed during the course of the year.

A I would have to look at the one before to find that.

MR. NESSEN: Could we have that?

MR. WENTZEL: June 30th?

MR. NESSEN: Yes.

THE WITNESS: Is that the period when the buyout took place?

Q This is the one before June 30, 1964, before the buyout.

MR. WENTZEL: Mr. Nessen, let's put that in evidence too, will you.

MR. NESSEN: We will, we will, we will. It's 44. It doesn't have "id" on it.

THE COURT: Exhibit 44 is received.

Is that June 3rd?

MR. NESSEN: Yes, your Honor.

(Plaintiffs' Exhibit 44 for identification was received in evidence.)

Q Can you from those two determine if the earned surplus was not taken out?

A It appears that the earned surplus was not taken out.

Q Nor the accrued profits too?

A I would have to look into the profits.

Q Would you, please?

THE COURT: Taken out as of what date?

MR. NESSEN: As of September 30th.

Q As of September 30th it remained in, is that right, Mr. Kobak?

A I haven't said yet.

(Pause.)

A It certainly appears that way.

THE COURT: Now wait a minute. What you are saying is that the earned surplus that was in as of June 30th was not taken out?

THE WITNESS: That's right.

THE COURT: Was there another item?

THE WITNESS: No.

BY MR.NESSEN:

Q There was an increment between June 30th and September 30th, and that was left in?

A Up to that point, yes.

Q Now, the tax returns.

THE COURT: Are you going to be able to finish in a few minutes?

MR. NESSEN: No. I have about a half hour. Can we resume in the morning?

THE COURT: I think we better. Yes.

Could the jury resume at 10 o'clock tomorrow, and if the jury will retire I have another short meeting with the lawyers. Thank you very much.

(The jury left the courtroom.)

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Taxi Weekly, Inc.

v. 66 Civ. 2827

Metropolitan Taxicab Board of Trade

New York, New York
July 11, 1975

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(Trial resumed.)

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(Jury present.)

JAMES B. KOBAK, resumed.

THE COURT: We are a little behind schedule, ladies and gentlemen, but we are still going to try to finish the proof today with summation and charge on Monday so it means working quickly and hard today.

Do you have any more cross?

MR. NESSEN: Yes, very briefly, your Honor.

CROSS EXAMINATION (Continued)

BY MR. NESSEN:

Q Mr. Kobak, I am going to show you Plaintiffs' Exhibit 103 for identification, price earnings ratio. Do you say that you used it or it helped you in your thinking? Mr. Kobak, some of these companies sell at seven times earnings, others at fourteen, other at thirty-nine. others at ninety-four. You really don't know why the market was valuing those stocks at those levels, do you, on each of these companies?

A In some cases you can pretty well figure it out.

Q Well, take the one that is at seven times.

A Which one is that?

Q Look at it.

A Seven times is the Hayden Publishing Company.

Q Do you know about that stock?

A I don't recall at this moment. They publish an electronics magazine. I don't recall what their problem was.

Q If they had a problem?

A If they had a problem.

Q Now, the price earnings, amI correct at J.C. Lakser, what you would do is take their statements, their annual statements, or the 10-K's, or 8-K's, whichever are available, and these filings with the SEC, and you would take what their earnings are and match them against what the stock was selling for in the marketplace, is that correct?

A Yes.

Q And you would just take what is on their financial statements, isn't that correct?

A We sometimes made some adjustments to them.

Q You sometimes did?

A Yes.

Q What kind of adjustments did you make for any of these companies?

A If there were abnormal income or expense items that would could identify, we would eliminate them.

Q What accountants call the unusual non-recurring as opposed to recurring, like printing costs, salaries?

A Right.

Q You never, did you, add back salaries, did you, or change the salary structure of these companies to arrive at these ratios, did you.

A No.

Q Now, just to make clear some of your testimony yesterday, is it my understanding that really the method of evaluating -- the method, not the numbers but the method of evaluating companies hasn't really changed in the publishing field from, say, 1964 through 1970?

A The method has not changed, no.

Q Coming right to the end, in about five minutes, did you ever hear of a man named Walter Grimms?

A Yes.

Q What does he do?

A As I understand it, I don't think I have ever met him, he is primarily a broker of newspapers and sometimes sells other things too.

Q Periodicals?

A Once in a while, I have heard.

Q And where is he located?

A I think in Washington.

Q You have no doubt that he is located in Washington, do you, Mr. Kobak?

A I don't really know. I think it is in Washington.

Q Have you ever heard of a company called Hitchcock Publishing Company?

A Yes.

Q Did you ever hear of a company called Industrial Publishing Company?

A Yes.

Q And Travel Weekly? Did you ever hear of that company?

A Yes.

Q Have you ever heard Joseph Shaw Communication Channels?

A Sure.

Q Have you ever heard of a Mr. Chinell in the publishing business?

A No.

Q How about Radio TV Weekly, do you remember that?

A Radio TV Weekly? No.

Q How about Jay Cobson Publishing Company?

A No.

Q Do you know Leonard Singer of Little Falls, New Jersey in the publishing business?

A No.

Q I take it you do no McGraw Hill?

A Yes.

Q And I see on Exhibit 100 that Medical World Publishing Company, for example, apparently was purchased by McGraw Hill?

A Correct.

Q And there are various McGraw Hill names. Now, is it your testimony, Mr. Kobak, that McGraw Hill -- you would recommend to McGraw Hill to buy this company for $250,000, you would have in 1964?

A I wouldn't recommend this company for McGraw Hill, no.

Q Now, sir, you mentioned on direct examination that you were an expert witness in the Curtis Publishing Company case, do you remember that?

A Curtis Circulation Company, I think it was.

Q So we will get it accurate, the Curtis Publishing Company v. Perfect Films, is that right?

A Yes.

Q And you were the only expert to testify at that trial?

A I really don't know whether another expert testified or not.

Q You were the only one on plaintiffs' case?

A Yes.

Q And you valued the Curtis Publishing Company at $33 million, didn't you?

A I don't believe we were discussing the publishing company, we were discussing the Circulation Company.

Q The Circulation Company; all right. Is that correct?

A I don't recall the number at this stage.

Q Well, let me see whether I can refresh your recollection on that.

You really don't remember that you valued that company at $33 million.

A I remember that I valued it but I don't remember the number.

MR.NESSEN: I am sorry, your Honor, I didn't realize that he wouldn't remember it.

Q Look at page 97 of this transcript, sir, and see if that refreshes your recollection that you actually evaluated the company at $33,300,000.

A That's what it appears; yes.

Q And isn't it a fact that before you testified there you had actually evaluated that company for CBS at $18 million?

A No, I evaluated the Curtis Publishing Company for CBS. There is a big difference between them.

Q Is that what you told the arbitrators in that case?

A What?

Q That there was a difference between the circulation company and the publishing company?

A Of course there was a difference.

Q Let me refresh your recollection. 1085.

MR. WENTZEL: Your Honor, I don't believe the witness has indicated his recollection needs any refreshing.

MR. NESSEN: I will just read very briefly.

THE COURT: It isn't a question of briefly. I guess you are attempting to impeach the witness so go ahead.

Q "Q Does a price of 18 million for the whole shooting match -- buildings, factories and everything else, including the tax loss -- ring a bell with you?

"A The price of 18 million was what at one stage

I told CBS their net costs should be. It has no relation to what the stockholders would receive or what tax benefits we would have.

"Q Now can you recall anythingmore specific by yourself without my prodding?

"A What are you talking about?"

Now, does that refresh your recollection, sir --

THE COURT: It isn't a matter of refreshing his recollection.

MR. NESSEN: I will leave that.

Q Now, isn't it a fact, so that we understand each other, that you valued that business at $33 million?

A Correct.

Q And, in fact, the arbitrators found how much?

A I don't recall.

Q 300,000?

A I don't recall. If you have the transcript, you know better than I.

MR. NESSEN: Thank you.

THE COURT: Mr. Dinkes?

MR. DINKES: Just a few questions, your Honor.

CROSS EXAMINATION

BY MR. DINKES:

Q Mr. Kobak, yesterday you were asked or you were shown some newspaper interviews you had given, do you remember that?

A No, sir.

Q Or magazine interviews?

A Yes.

Q And in those interviews you were asked your opinion on various things and you gave it, is that right?

A I presume so.

Q Were you paid for those interviews?

A Of course not.

Q So you weren't paid for your opinion in those. Are you being paid for your opinion in this case?

A I certainly am. Why?

Q Why don't you let me ask the questions, please.

You testified that you represented both buyers and sellers, isn't that right?

A That is correct.

Q Did there ever come a time when you said to a buyer "You know, I reviewed this company. It is not for you. Don't go near it. It is worthless, or it isn't worth anything like the seller is asking for"? Have you done that on occasions?

A Many times.

Q What are some of the factors that led you to the conclusion that these companies aren't worth anything, shouldn't be bought by your client? Do you want to tell us that?

A I think you start out -- first there are some companies -- Mr. Nessen just mentioned McGraw Hill buying Taxi Weekly. Taxi Weekly wouldn't fit with McGraw Hill. The price would be meaningless.

Q Assume for a moment you have got a customer who could fit into the picture of a particular publication, he is the buyer, it fits into his picture, but for some reason, your opinion is that he shouldn't buy it, what are the factors that go into buying that publication?

A The factors -- one obviously would be price. Is that what you are getting at or do you want to talk about other factors?

Q What are some of the other factors?

A If the magazine wouldn't fit with his other operation.

If the people couldn't in my opinion work together, which is often a problem.

If the field was declining to such an extent that I didn't see a future for the magazine.

Q Now when you talk about declining, you say if a periodical, magazine or newspaper has a future, or a growth, then it might be a good opportunity to buy, is that right, but if it has a decline or the future doesn't look rosy for it then you might tell your client not to buy it, is that true?

A Depending on the price.

Q Depending on the price, of course.

THE COURT: All these things are obvious.

MR.DINKES: Will you bear with me for one minute? I think I can tie it in for a second.

Q When you say declineing, do you mean advertising revneues going down or look like they might be going down in the future?

A That and circulation.

Q Circulation and advertising revenues?

A Yes.

Q With reference to this company, when you talk about going concern, you are talking about what the buyer or what you would recommend the buyer to pay for it, right?

A Right.

Q And when you were evaluating the company you were talling about both the newspaper and the magazine, is that right?

A That is correct.

Q That's what make up the company. And you told us that the gross revenues of both of them, all of them put together from advertising and circulation was about $150,000, is that right?

A Right.

Q And about how much of that do you recollect was advertising revenue on the magazine, the auto industry taxi news, whatever it was called?

A I don't recall. 30 or 40,000.

Q Is that a substantial amount of the total gross revenue of the company?

A For this company, yes.

Q Was it about 30 per cent of the total revenue, advertising in that magazine?

A Right.

Q Are you aware, sir -- by the way, you are looking now for the fiscal year ending March 31, 1974, is that right?

A Right.

Q Are you aware that the circulation revenue for that magazine was only $732 for the fiscal year 1964? Are you aware of that?

A I can look it up if you want.

Q Are you also aware that the circulation revenue for that newspaper for 1963 was some $2672? Are you aware of that?

THE COURT: You are getting mixed up. Are you talking about the monthly magazine?

MR. DINKES: Magazine.

THE COURT: You just said newspaper.

MR. DINKES: I apologize.

Q Are you aware of that?

A If you want me to look it up, if you say that is what it was, I will agree with you. Go on.

THE COURT: If you are quoting the right figures and counsel don't challenge them.

MR. NESSEN: The figures are accurate.

Q So that the circulation revenues for the years '63 to '74 had decreased by two-thirds from 2600 to 700 approximately?

A Right.

Q Isn't that a danger sign?

A No.

Q In other words, if the circulation revenue went down that would be a good sign for this magazine, is that right?

A It might be.

Q Didn't you tell us yesterday that the circulation has to go up because if the circulation goes up the advertising goes up?

A In the business paper field.

Q Please answer my question, sir. Didn't you tell us yesterday?

MR.WENTZEL: Your Honor, I think the witness ought to be given a chance to answer the question.

MR. DINKES: He could have answered it yes or no. Either he did or didn't say it yesterday. That was my question.

THE COURT: Let us start again.

Just take it easy.

MR. WENTZEL: Mr. Dinkes is confusing the concept of circulation revenue.

THE COURT: You are not the witness either. Just ask a question and if you think it is misleading, object.

MR. WENTZEL: I am objecting.

Q Mr. Kobak, yesterday didn't you testify that you can charge more for your advertising if your circulation is greater,didn't you say that?

A Normally, yes.

Q And you can't charge as much for your advertising if your circulation is much less, can you?

A Under some conditions, you can, but as a general rule, go on.

Q And are you now telling us that if in the year ending March 31, 1964, the circulation of this magazine was one-third of what was the very year before, are you saying that that had no impact on the value of this business?

MR. WENTZEL: I object to the form of the question.

THE COURT: Overruled.

A I'm saying that the circulation revenue is not the same as the circulation of the magazine. In the business paper field, magazines are often maybe more than half of them distributed free. Therefore, there may be no circulation revenue. For some of the strongest magazines in the business --

THE COURT: Do you know whether that was the situation here?

THE WITNESS: Certainly.

THE COURT: Do you know what the free distribution of Taxi Industry was?

THE WITNESS: I don't recall at this time.

THE COURT: Do you know anything about that?

THE WITNESS: I have it in my files but I don't recall it.

THE COURT: When you were testifying, have you had that in mind at all?

THE WITNESS: Well, I know that most of the circulation was free, which is the major point.

THE COURT: Do you know that most of the circulation of Taxi Industry was free?

THE WITNESS: Correct.

THE COURT:Okay.

Q Could I see the files that you are referring to, sir?

A You may see all of my files but I don't know if I can put my finger on that page at this moment.

(Pause.)

THE COURT: Does anybody have any information on that subject quickly?

MR.DINKES: If your Honor please, with reference to anyone, it is the witness, the expert witness' opinion. He is basing his opinion on certain facts. And I want to know what facts he had when he gave his opinion.

THE COURT: I am sure that those facts are not really disputable, and if somebody can help us out and save some time.

MR.NESSEN: Your Honor, I would agree with Mr. Dinkes. The witness has said that he had something in his file.

THE COURT: I just can't wait for him to look. We will have to go ahead and then we will come back to it again on that. We will just take a recess but I can't spend some time having him look at the files. You go ahead on another subject and we will come back to that.

Q Mr. Kobak, do I understand that when you reached your opinion as to the value of this company you took into consideration the circulation of the magazine?

A Of course.

Q Am I also to understand that when you took into consideration the circulation of the magazine, you knew how many of these magazines were given away for free and how many were sold?

A I was given information about that, yes.

Q I'm going to ask you again: Would you tell us what that information was that was given to you upon which you based your opinion?

A I said I can look it up in the file.

Q I am asking you to look it up. I think it is urgent and important to look it up.

THE COURT: Take it easy, Mr. Dinkes. If it is something that you need to look up then we will come back to you after you have had a chance to look it up but we won't take time in the jury's presence to have you do it on the stand.

Go ahead to another topic.

MR.DINKES: That is all I have.

THE COURT: Mr. McGrath?

MR. MC GRATH Briefly.

CROSS EXAMINATION

BY MR. MC GRATH:

Q Mr. Kobak, I invite your attention to the step in the valuation which you testified to yesterday. Did you tell us yesterday that one of the specific steps in evaluating a property was its position in a competitive field?

A Yes.

Q And did you know, in 1964, 1963, 1962, what competition Taxi Weekly had?

A Yes.

Q What was that competition?

A There were several association papers in the field.

Q And did you take a look at those association papers?

A Yes.

Q And where they approximately the same size, at least one of them approximately the same size?

A One of them was.

Q Was that the UTOG Newscaster?

A Right.

Q Do youknow what the circulation of that was?

A I understand it was some 2,000.

Q Did you know also that Lomto also had a publication?

A Yes.

Q Do you know what the circulation of that was?

A I didn't know the circulation of that.

Q Did you know that there were other small owner operator groups that put out bulletins or newsletters of their own?

A Yes.

Q Now, at that point, 1964, 1963 specifically, did you know how many owner operator medallions there were and how many fleet medallions there were?

A Yes.

Q How many owner operator medallions were there?

A Approximately 5,000.

THE COURT: What medallions? Owner operator?

MR. MC GRAW: Owner operator.

Q And did you take that competiton into consideration?

A Yes, I did.

Q When you valued this paper?

A Yes.

Q And when you valued or analyzed the circulation of Taxi Weekly, did you analyze that circulation on the basis that Taxi Weekly was going to owner operators?

A Yes.

Q You did?

A Yes.

Q Didn't it fly in the face of reality when you knew that the owner operators had their own publications?

A No.

Q Is it your testimony then, sir, that in your analysis Taxi Weekly went to owner operators as well as to fleet drivers?

A Correct.

Q How did it go to owner operators?

A Primarily it was sent to them free.

Q Through the mails?

A I can't answer that.

Q Did you ever review the affidavits that were submitted to the Postal Service or the U.S. Postal Department by Taxi Weekly in order to qualify for a second-class mailing permit?

A No.

Q There are such affidavits, aren't there?

Withdrawn.

There should have been such affidavits, shouldn't there have been?

A With each issue you were supposed to file a statement of circulation.

Q And quarterly you are supposed to file with, in 1964, on a quarterly basis, publications that qualify for a second-class mailing permit to file affidavit with the U.S. Postal Service and they were to keep copies of those affidavits in their office?

A I don't know all those rules.

Q Ins't that a requirement in the publishing field for publications --

THE COURT: He said he didn't know all those rules.

Q You don't know the rule?

A No.

Q At any time when you went through the books and records of Taxi Wedkly did you see an affidavit or a copy of an affidavit that had been submitted to the U.S. Postal Department?

A No.

THE COURT: You see, your understanding was that copies went to the owners drivers by mail?

THE WITNESS: That's my understanding.

THE COURT: Largely free?

THE WITNESS: Yes.

THE COURT: Was that your understanding?

THE WITNESS: Yes.

THE COURT: What was your understanding about the number of those copies to owner drivers?

THE WITNESS: There were some four thousand sent to owner drivers. Some of them were subscriptions. The exact number I can't answer at this point. Most of them were free.

Q Were you given a number of paid subscriptions?

A Was I given a number?

Q Yes.

A I have it somewhere, I gather.

Q So when you look for the information for Mr. Dinkes, would you do me the courtesy of looking for the number of paid subscriptions?

A Surely.

Q And also the basis upon which you received that information?

A Surely.

MR. MC GRAW: Thank you very much.

THE COURT: All right.

MR. WENTZEL: Just a couple of questions, sir.

REDIRECT EXAMINATION

BY MR. WENTZEL:

Q Mr. Kobak, yesterday Mr. Nessen was asking you about increased costs in the publishing industry in general, is that correct? Do you recall that?

A Yes.

Q Now, he referred you to some studies that your firm had made over the years and that you had reported on?

A Yes.

Q Is that right?

A Yes.

Q Now, did your firm also study revenues during that period of time?

A Of course.

Q And did those studies include whether the industry's advertising revenues were increasing or decreasing, and if so, how much?

A Yes.

Q Have you had an opportunity to examine Taxi Weekly's advertising revenues?

A Yes.

Q Did they increase at all in the years that you examined?

A From the period 1960, fiscal '60, to fiscal '64 they increased by some $5,000.

Q And how did the percentage of increase of Taxi Weekly compare to the industry in general?

A During that period it was above the industry in general.

Q Now, Mr. Nessen also asked you about franchise tax returns. Do you recall or do you know whether any method or provision is provided for a subchapter S corporation to make a calculation of franchise tax return payments?

A New York State has an alternative tax that corporations must make a calculation on in these cases, and in that way they recognize the adding salaries back to the profits and then developing the tax, and in that way they recognize the subchapter S treatment that the federal government has although they don't do it in exactly the same way as the federal government.

MR. WENTZEL: I have nothing further.

THE COURT: I don't understand that.

MR. NESSEN: Your Honor, may I take cross on that?

RECROSS EXAMINATION

BY MR. NESSEN:

Q The form for the franchise tax is the same for all corporations, isn't it?

A Yes.

Q There is nothing special on that form but subchapter S?

A Except that by the nature of a subchapter S it would be likely that you would have to use the alternative tax method.

Q That's because you would adjust the compensation, isn't it?

A That is correct.

BY THE COURT:

Q What I didn't get is what kind of an adjustment would normally be made for the sakeof the New York franchise tax reducing compensation or increasing it or what?

A No. They take the profits, add the compensation of the officers in, deduct $15,000 and then calculate the tax.

BY MR. NESSEN;

Q You refreshed your recollection on this overnight, didn't you?

A Of course.

Q And the fact is that there is not a word in that form about subchapter S, is there?

A No.

Q And it is because the form allows you to juggle this way that perhaps accountants would increase compensation, isn't that a fact?

A I don't think it is a juggle. It actually results in a higher tax than the other way.

Q Not if you get 5-1/2 per cent of net income or you use this other way, don't you, whichever is higher.

Q Whichever is higher?

A Right.

Q And if you put it the other way, you might get a higher tax, might you not?

A Which other way?

Q I mean, if you increase net income?

A Oh, yes. You would get a higher tax in either case.

Q And there is nothing -- and all corporations use the same form, isn't that correct?

A Correct.

Q And when you said accountants don't juggle, they don't, do they?

A No, sir.

Q They don't mislabel?

A I can't speak for all other accountants.

Q All right. You looked at the advertising of Taxi Weekly?

A Yes.

Q Taxi Weekly, Inc.?

A Yes.

Q Are you saying that there was a progression from 1960 right through to 1964 in advertising income?

A I didn't say there was a progression. I said that the figures for '64 were higher than 1960.

Q That's what you mean,is that correct?

A That's what I said.

Q And the figures for 1963 were lower than 1960, weren't they, or were they?

A Yes.

MR. NESSEN: I have no further questions.

BY THE COURT:

Q I didn't understand either you or Mr. Nessen on the franchise and I'm afraid we have got to go into that.

For the sake of a subchapter S corporation, filing its federal income tax -- let us just get to the basic thing quickly. What is the point of the subchapter S again?

A The point of subchapter S is to tax a corporation as if it were a partnership. In this way you avoid first having a corporation tax on the income of the corporation, and second, when dividends are declared for the stockholders then paying an individual income tax -- instead of two taxes you pay one.

Q If you were just a corporation, a regular corporation, and you have certain expenses, including officers salaries, and profits over those salaries, the corporation would have to pay a tax on the profits?

A Correct.

Q The officers, of course, would pay income tax on their salaries as part of their income, right?

A Correct.

Q Now, if any dividends were paid to the stockholders, whether they were officers or not, then they would have to pay a tax on those dividends?

A Correct.

Q So the corporation would be taxed and then the individuals who were getting money out of salary and dividends would also be taxes?

A That is correct.

Q Now, is it correct that where you got a small corporation that operates like a partnership, they made this special subchapter S law, is that correct?

A That is correct.

Q And is it correct that the corporation itself is not taxed at all?

A The corporation is not taxes.

Q Okay.

Now, let us suppose that in a given corporation the officers' salaries as reported and actually taken out, let's suppose they are very low and a lot of the profit after those salaries is just left sitting in the corporation for the particular year, it is not paid out to anybody, now, I mean, the officer of course pays his income tax on his salary, right?

A Correct.

Q Now, is there any tax on those profits that are left in the corporation?

A Are you talking about a subchapter S now?

Q Yes, I am.

A Well, no. They are treated as if they were distributed to the stockholders.

Q Okay. So, in other words, the profit is taxed --

A To the individual.

Q -- to the individual owners?

A Correct.

Q Regardless of whether it nominally is left in the corporation or they take it out and put it in their bank accountants, right?

A Correct. There are, I believe, certain rules that you have to take a certain amount out.

Q That's basically the partnership is run and the taxes are paid by the partners or the firm whether they leave it in the bank account or however?

A Correct.

Q So that if the owner of the corporation is the same person as the officer, he gets taxes on whether he calls it salary or profit or leave it in or takes it out, right?

A Correct.

Q Now, I don't know -- I just don't follow at all the problem. What is the problem about the franchise tax? I take it the franchise tax, the state is worried about profit, right?

A The state is worried about profit. The state is worried also if the owners put in big salaries for themselves, that would reduce the profit.

Q When I say worried, I meant there is a different question confronting the state on the franchise tax than confronting the federal government on the income tax, right?

A Exactly.

Q Because the concept of profit isn't -- profit as distinct from salary isn't particularly important for the income tax but it is crucial on the franchise tax?

A Correct.

Q And whereas it can all be one big figure for the income tax the state comes along and they have to decide which part of this big figure is profit really and which part is really salary, is that right?

A Right.

Q So, for the sake of the franchise tax, if the salary is high on the books and the profit is low, it is less franchise tax?

A Correct.

Q Now, what was this adjustment or alternative that you were talking about with Mr. Wentzel and then with Mr. Nessen?

A The alternative tax as to make a correction for that, at least to some extent.

Q A correction to what?

A By taking the owners' salaries,adding them back to the profit, and then calculating a tax.

Q Okay.

Now, who does this?

A The taxpayer.

Q And let us suppose that the taxpayer's accountant has originally figured salaries very high and profits very low, that's good for the taxpayer, isn't it??

A Right.

Q Why would he then adjust it and reduce his salary and increase the profit? Is that what you are saying he would adjust to do?

A No. There are no three methods of figuring the franchise tax and you have to figure them all three ways. One of them is just on the income, one is on the capital, and one is on this alternative tax which is income plus officers' salaries.

Q In other words, he has to show all those calculations?

A The third doesn't apply very often, as you can imagine because most corporations don't have that problem.

Q Most corporations aren't subchapter S corporations?

A That's right.

MR. NESSEN: That has nothing to do with this, your Honor.

THE COURT: Just a moment. Let me do this.

Q You may have a subchapter S corporation that has to pay -- that is subchapter S for federal income tax purposes but still is located in New York State and has to pay its franchise tax, right?

A Correct.

Q And that's what we are talking about?

A Right.

Q Now if you have got the subchapter S corporation, did they have to, for the sake of the New York taxing corporation, show these three alternatives?

A They normally would, yes, sir.

Q So that the taxing authorities can evaluate what franchise tax to show?

A You calculate your own tax, of course. And then pay it.

Q All right. Now, if you are a subchapter S, was it this third adjustment Mr. Wentzel was asking you about?

A Yes, sir.

Q What is that?

A That is the adjustment to add to profits the salaries of officers.

Q And did they say all salaries, officers' salaries have to be added?

A Certain specific ones. I think they have to own 5 per cent or more of the company.

Q And then they are all added?

A Then they are added to the profit that was shown, then there is another little calculation, they deduct $15,000, and then I believe you take 30 per cent of that figure and figure the tax on it.

Q Well, now, is that conclusive as to what the franchise tax will be?

A Unless there is an examination.

THE COURT: Okay. I don't know. I'm afraid this gets -- well, any way.

A Well, as you know the tax law bears very little relation to real life so it gets pretty messy.

THE COURT: All right, why don't you step down. You look through your materials and see if you can find the information about the form and amount of subscriptions to the taxi industry and then we will do something else and get back to you.

MR. DINKES: Would you ask Mr. Kobak to do that without consultation with Mr. Peterman or his lawyer?

A I wouldn't ask that at all. Okay? I don't think they are probably going to have time and I wouldn't bar it in any event.

(Witness excused.)

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175 THE COURT: Can you read some depositions.

MR. WENTZEL: Your Honor, at this time as you may recall, I have been mentioning the last few days, I have some miscellaneous documents to get into evidence, and I would like to offer them quickly.

MR. NESSEN: We haven't seen those. Why don't we read them and --

THE COURT: When is the day going to come when he can offer those documents?

MR. NESSEN: I said let him read and I can look at what he is offering and then we can save some time.

MR. WENTZEL: I prefer to get this done my own way.

MR. NESSEN: Why don't you show it to us?

MR. WENTZEL: I offer 23, a list of Metropolitan members, which was furnished to us by them out of their files.

MR. NESSEN: Your Honor, this is just it. It is a plain list and I am going to have to look through my --

THE COURT: Look, the time has come though, we have got to finish up this proof, get these documents and stipulations in and get them in, but to save every minute why don't you hand the materials to Mr. Nessen and we can go ahead with the deposition reading.

MR. NESSEN: That's what I meant, your Honor. Let's do it this way so we can move ahead.